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ISSN 1180-5218

## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 3 November 1999

# Journal des débats (Hansard)

Mercredi 3 novembre 1999

**Standing committee on  
general government**

Organization

**Comité permanent des  
affaires gouvernementales**

Organisation



Chair: Marilyn Mushinski  
Clerk: Viktor Kaczkowski

Présidente : Marilyn Mushinski  
Greffier : Viktor Kaczkowski



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 3 November 1999

Mercredi 3 novembre 1999

*The committee met at 1544 in committee room 1.*

## ELECTION OF CHAIR

**Clerk of the Committee (Mr Viktor Kaczkowski):** Good afternoon, members. Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

**Mr Ted Chudleigh (Halton):** It's my great honour to nominate Marilyn Mushinski for the position of Chair. If she's anywhere near as good at chairing as she is at crossword puzzles, she'll make a magnificent Chair.

**Clerk of the Committee:** Are there any further nominations? There being no further nominations, I declare nominations closed and Mrs Mushinski elected Chair of the committee.

## ELECTION OF VICE-CHAIR

**The Chair (Ms Marilyn Mushinski):** Thank you for the honour. It's now my duty, honourable members, to call upon you to elect a Vice-Chair. Are there any nominations?

**Mr Garfield Dunlop (Simcoe North):** I'd like to nominate Julia Munro as the Vice-Chair of this committee, and it's a privilege to do so.

**The Chair:** Any further nominations? There being no further nominations, I declare nominations closed and Mrs Julia Munro elected Vice-Chair of the committee.

## APPOINTMENT OF SUBCOMMITTEE

**The Chair:** Do we have a mover of the motion to appoint a business subcommittee?

**Ms Shelley Martel (Nickel Belt):** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Chudleigh, Mr Levac and Mr Marchese; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

**The Chair:** Is there any discussion on this motion? All those in favour? Those opposed? That carries.

## COMMITTEE BUSINESS

**The Chair:** Is there any other business?

**Mr Chudleigh:** I would like to suggest that one of the first items of business this committee will be addressing will be the appointment of an Environmental Commissioner. In order to speed up that process, I wonder if the clerk could be instructed to circulate a list to the House leaders for consideration by the members as to the criteria for the various number of people who have made the short list; and that on the first opportunity following next week's break, we have a briefing from the human resources people from the Legislative Assembly to apprise us of the method by which they arrived at the short list for our approval; and then as soon as possible after that, we commence with the interviews of the various people.

**The Chair:** You're suggesting that this be the first item of business for this committee. Are you also suggesting, Mr Chudleigh, that this be sent to the subcommittee first, prior to coming to the committee?

**Mr Chudleigh:** No, I'm suggesting that it be sent to the House leaders for distribution. I believe that's the proper format, to send it to the House leaders for distribution to the committee so that they are aware of it. Is that not correct?

**Clerk of the Committee:** I'm not privy to the process regarding the appointment of the Environmental Commissioner, so I would certainly suggest that someone from human resources be advised of your wishes and be asked to deal with your request.

**Mr Chudleigh:** If that would happen on the first opportunity following the constituency week break, it would be helpful to the committee, I believe, if they had the written criteria prior to that meeting so they could review those criteria and be prepared to ask questions, so they know what the criteria would be.

**The Chair:** So, it has been determined that that is coming to this committee.

**Mr Chudleigh:** Yes.

**The Chair:** Is everyone agreeable to that request?

**Mr Dave Levac (Brant):** Just a question of clarification for Mr Chudleigh: Your comments suggested that human resources have given us a short list or have created a short list already.

**Mr Chudleigh:** It's my understanding that they have created a short list; I believe there are three people on it. They've used the criteria to get there. It's those criteria that I think we should be apprised of prior to the meeting.



so we can ask somewhat intelligent questions. Then, as soon as possible after that first meeting or maybe even at that meeting, depending on how the logistics work out, we could begin the interview process with the people. I understand we have to approve the process they have used to arrive at that short list, and they will also have a list of people who didn't make the short list for our consideration.

**Mr Levac:** Madam Chair, if I may, I would definitely agree with what Mr Chudleigh has said. I would also recommend and support his premise that it be sent to the House leaders and follow a process, because I think that would educate absolutely everybody involved who has been elected who might have a comment to make. I think it's a really good process, even if it turns out that it's not the one that normally is the protocol. I think it's a great way to go.

**Mr Chudleigh:** Viktor, if you could ensure that the members of the committee get a copy of it, and maybe a

copy could also go to the House leaders so they're aware of it as well.

**Clerk of the Committee:** It's my understanding, then, that you will want a copy of the criteria, the short list and the complete list. I shall contact human resources and ensure that it's distributed to all members of the committee prior to our next scheduled meeting, which would be Monday, November 15, I believe, at 3:30. If everyone is in agreement—

**The Chair:** Is everyone in agreement? OK.

**Mr Chudleigh:** Good. Thank you very much.

**The Chair:** Any further business?

**Mr Levac:** Could I ask that all meetings be run like this, this quickly?

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** I'll second that.

**The Chair:** The meeting is adjourned.

*The committee adjourned at 1551.*







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### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### **Chair / Présidente**

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

#### **Vice-Chair / Vice-Présidente**

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Mr Toby Barrett (Norfolk PC)

Mrs Marie Bountrogianni (Hamilton Mountain L)

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Mrs Julia Munro (York North / -Nord PC)

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Ms Shelley Martel (Nickel Belt ND)

#### **Clerk / Greffier**

Mr Viktor Kaczkowski

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Monday 15 November 1999

# Journal des débats (Hansard)

Lundi 15 novembre 1999

## Standing committee on general government

Appointment of  
Environmental Commissioner

## Comité permanent des affaires gouvernementales

Nomination du Commissaire  
de l'environnement

Chair: Marilyn Mushinski  
Clerk: Viktor Kaczkowski

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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 15 November 1999

Lundi 15 novembre 1999

*The committee met at 1540 in committee room 1.*APPOINTMENT OF  
ENVIRONMENTAL COMMISSIONER

Consideration of the matter of the appointment of a new Environmental Commissioner.

**The Chair (Ms Marilyn Mushinski):** I call the meeting to order. There's one item of business on the agenda today, respecting the appointment of a new Environmental Commissioner. We have available to us today Ms Marilyn Abraham, who is with the HRD and is willing to give us a presentation on the process that has been recommended, if committee is in agreement with that. That's OK?

**Mr Dave Levac (Brant):** Yes, Madam Chair.

**The Chair:** Members of committee, because of the confidential nature that is before us, I'm going to suggest that we go into closed session. We'll have the doors closed. Do we need approval to go into closed session? Do we need a motion?

**Clerk of the Committee (Mr Viktor Kaczowski):** You don't need a motion.

**The Chair:** I'm sorry, please bear with me. Is there unanimous consent to go into closed session?

**Mr Garfield Dunlop (Simcoe North):** I move we do, Chair.

**Mr Levac:** Seconded.

**The Chair:** Thank you.

*The committee continued in closed session at 1541.*



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Monday 6 December 1999

## Journal des débats (Hansard)

Lundi 6 décembre 1999

### Standing committee on general government

Red Tape Reduction Act, 1999

### Comité permanent des affaires gouvernementales

Loi de 1999 visant à réduire  
les formalités administratives



Chair: Marilyn Mushinski  
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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 6 December 1999

Lundi 6 décembre 1999

*The committee met at 1851 in committee room 1.*

## RED TAPE REDUCTION ACT, 1999

LOI DE 1999 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 11, An Act to reduce red tape, to promote good government through better management of Ministries and agencies and to improve customer service by amending or repealing certain Acts and by enacting four new Acts / Projet de loi 11, Loi visant à réduire les formalités administratives, à promouvoir un bon gouvernement par une meilleure gestion des ministères et organismes et à améliorer le service à la clientèle en modifiant ou abrogeant certaines lois et en édictant quatre nouvelles lois.

**The Chair (Ms Marilyn Mushinski):** I call the meeting to order. Good evening, ladies and gentlemen. We're here to discuss Bill 11. For the record, I should read to the committee government notice of motion 14, Mr Sterling's resolution:

"That pursuant to standing order 46 and notwithstanding any other standing order or special order of the House relating to Bill 11, An Act to reduce red tape, to promote good government through better management of Ministries and agencies and to improve customer service by amending or repealing certain Acts and by enacting four new Acts, the standing committee on general government shall be authorized to meet at 6:45 pm on Monday, December 6, 1999 for the purpose of considering the bill;

"That, at such time, the Chair shall put every question necessary to dispose of this stage of the bill without further debate or amendment."

Consequently, I will be now entertaining motions—I'm sorry; we shall now go into clause-by-clause consideration of the bill. I'm wondering if we can have—Mr Martin?

**Mr Tony Martin (Sault Ste Marie):** Just for clarification on that last issue, does this mean we won't be

entertaining any debate or amendments on any parts of this bill tonight?

**The Chair:** Yes. You'd like me to repeat that, Mr Martin?

**Mr Martin:** That's what you're saying, we're just going to go through clause by clause without any debate or amendment?

**The Chair:** That is correct. I have received instruction from the House that the Chair shall put every question necessary to dispose of this stage of the bill without further debate or amendment.

**Mr Martin:** Could I just put my ever-so-brief comment on the record? I find this very disappointing and frustrating. All of us around the table are elected to this place to give due process to pieces of legislation that come forward, whether it be from government or private members, such that at the end of the day it is something that will be in the best interests of all of the folks who call Ontario home. Here we are with a fairly extensive bill, changing a lot of acts that were obviously put in place over a period of time for all the correct reasons at the time of their passing.

**The Chair:** Mr Martin, with respect, it sounds to me as if you are now about to enter into the very thing you should not be entering into. I'm suggesting that we cannot debate any part of this bill, as ordered by the House.

**Mr Martin:** OK. I'll just finish then by reiterating my disappointment and frustration with this process.

**The Chair:** That's so noted. Thank you, Mr Martin.

Shall sections 1 through 3 carry? Carried.

Shall schedules A through S carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 11 be reported to the House? Agreed.

That completes the work of the committee. Can I have a motion to adjourn?

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** So moved.

**The Chair:** This meeting is adjourned.

*The committee adjourned at 1856.*



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Monday 20 December 1999

**Journal  
des débats  
(Hansard)**

Lundi 20 décembre 1999

**Standing committee on  
general government**

Committee business

**Comité permanent des  
affaires gouvernementales**

Travaux du comité

Chair: Marilyn Mushinski  
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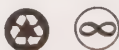
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STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 20 December 1999

Lundi 20 décembre 1999

*The committee met at 1623 in committee room 1.*

## COMMITTEE BUSINESS

**The Chair (Ms Marilyn Mushinski):** I call the meeting to order. The purpose of today's meeting is to consider the future business of the committee pertaining to the following private member's public bills that have been referred to this committee: Bill 13, An Act to preserve Ontario's marine heritage and promote tourism by protecting heritage wrecks and artifacts; Bill 15, An Act to regulate the discharge of ballast water in the Great Lakes; and Bill 29, An Act to amend the Ambulance Act to provide for the minimum staffing and equipping of ambulance stations.

When I say "consideration" of the future business, this is really an attempt to set the schedule for this committee to consider these three bills. I have had an opportunity to discuss that with the three members who wrote these bills and I believe you're all going to be subbed on to this committee. Is that correct? If you could advise the committee of your preferred agenda, we'll discuss it. We'll start with Mr Lalonde.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Yes, definitely the sooner the better so that we could discuss Bill 29, the Ambulance Amendment Act (Minimum readiness). As you probably know, in eastern Ontario there are only two places at the present time where we don't have a minimum of 12 hours a day of protection or on-site ambulance service seven days a week. We know that out of all those areas of eastern Ontario, of which I'd be willing to give a copy to everyone—

**The Chair:** Mr Lalonde, we're not actually getting into the merits of each bill today; it's really to discuss the schedule. If we are going to meet before the House comes back, probably in the spring, we will need to get the permission of the House to meet during that time. That's really all we're here to discuss today, not the merits of the bill.

**Mr Lalonde:** Madam Chair, I would be ready to wait until March, if we could wait till March.

**Mr Jerry J. Ouellette (Oshawa):** I'm content to wait till the House resumes. That way we are at Queen's Park and all the members will be in attendance at that time.

Rather than try to set a date in accordance with the House calendar, when the House resumes is fine by me.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** With respect to the Ontario Marine Heritage Act, I've chatted with a couple of the members and I also feel it would be quite appropriate to wait until the House resumes rather than calling this committee out on the road between sessions.

**Mr Ted Chudleigh (Halton):** I move that all three bills be considered in the spring session.

**The Chair:** Mr Lalonde, is that OK with you?

**Mr Lalonde:** I'll go along with that.

**The Chair:** I have a motion to consider these three bills as the first order of business for this committee when the House resumes in the spring.

**Mr Chudleigh:** That wasn't my motion; it wasn't the first order of business. We may be given a government bill and that would take precedence. There was no reference to it being the first order of business.

**The Chair:** We'll discuss it in the spring; forget the first order of business.

**Mr Dave Levac (Brant):** That was three quarters of my clarification. The other quarter is, would there be, then, a decision on how the bills are introduced and what we do in terms of either public submissions or discussion from the committee level? I'm just not aware of what the process is.

**The Chair:** The process, if Mr Chudleigh's motion passes, is that it will be referred to the subcommittee, which will meet to send a recommendation to the committee as to the schedule.

**Mr Levac:** That subcommittee wouldn't meet until the House resumes?

**The Chair:** That's correct.

**Mr Levac:** Thank you. I just needed that clarification.

**The Chair:** That then gets around the issue of the order of business as well.

**Mr Ouellette:** Are you expecting any more bills to be referred to this committee?

**The Chair:** Not at this point.

**Mr Ouellette:** OK, just asking.

**The Chair:** Who knows what's going to happen between now and when this session ends?

**Mr Chudleigh:** There was a motion in the House I believe today that only two committees would sit in the intersession, being finance and estimates.



**Mr Levac:** The only thing that you think would happen then between now and tomorrow—

*Failure of sound system.*

**The Chair:** —if you were wanting to discuss any of them before the House reconvenes in the spring, we would need to get permission. I'm not quite sure what the requirement would be. I'm assuming if there is a referral from the House to this committee, the House would also deal with the scheduling at the same time. We'd have to assume that the House leaders will look after that matter.

**Mr Lalonde:** One more question, Madam Chair. When those bills are discussed at the committee, are there any public hearings where the public is invited? I've never attended that.

**The Chair:** Yes, indeed. That is what the discussions of the subcommittee will be, and the subcommittee of course comprises members from both the government side and the two opposition parties. So you will have input into that process to determine the public hearings.

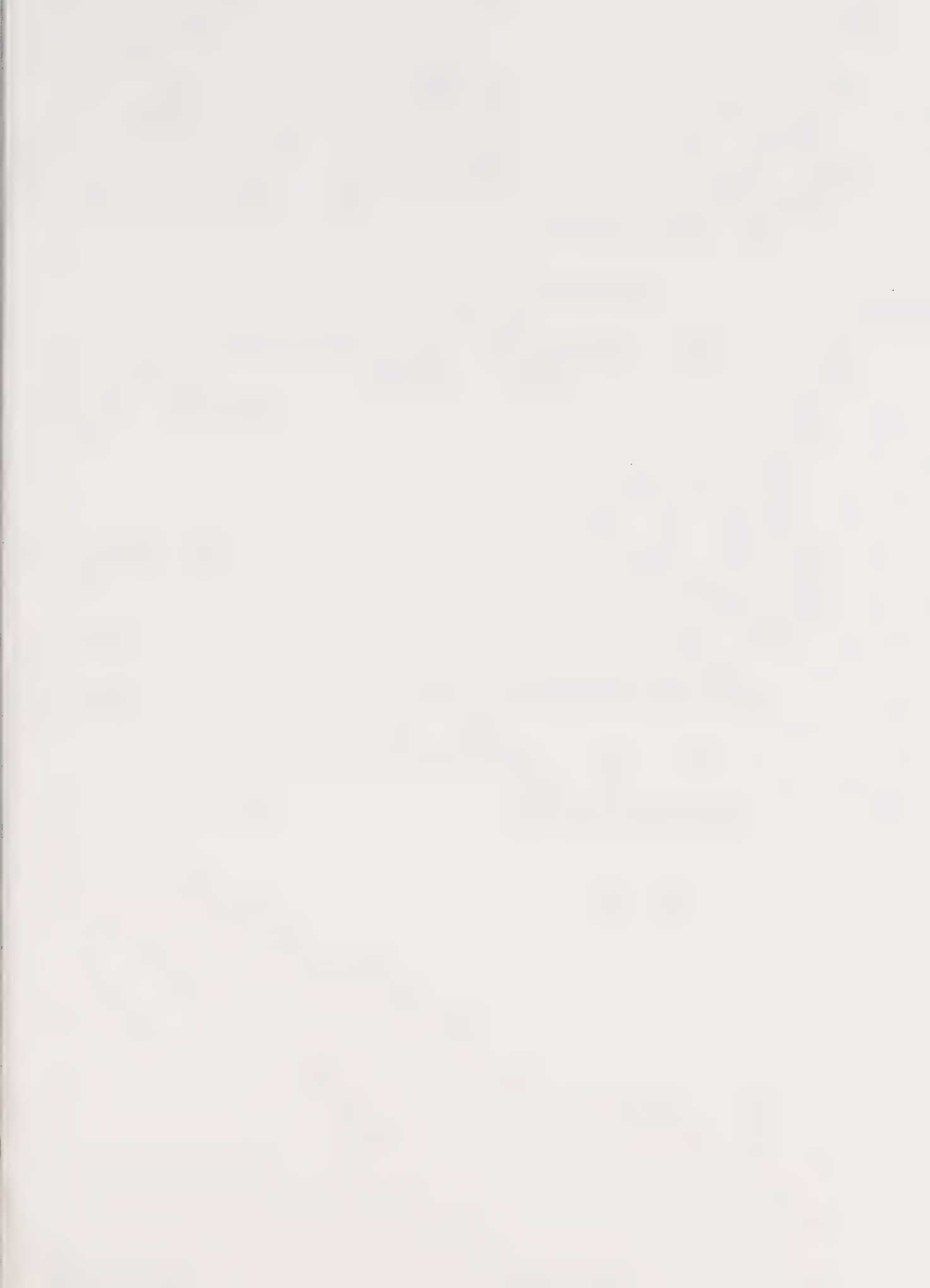
Does everyone understand the motion before you, that we discuss these three matters when the House reconvenes in the spring?

All in favour? That's carried.

Can I have a motion to adjourn?

**Mr Chudleigh:** So moved.

*The committee adjourned at 1632.*





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Monday 20 December 1999

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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 16 February 2000

# Journal des débats (Hansard)

Mercredi 16 février 2000

## Standing committee on general government

Collection Agencies  
Amendment Act, 1999

## Comité permanent des affaires gouvernementales

Loi de 1999 modifiant la Loi sur  
les agences de recouvrement



Chair: Marilyn Mushinski  
Clerk: Viktor Kaczkowski

Présidente : Marilyn Mushinski  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 16 February 2000

Mercredi 16 février 2000

*The committee met at 1049 in the Sheraton Fallsview Hotel, Niagara Falls.*

COLLECTION AGENCIES  
AMENDMENT ACT, 1999  
LOI DE 1999 MODIFIANT  
LA LOI SUR LES AGENCES  
DE RECOUVREMENT

Consideration of Bill 37, An Act to amend the Collection Agencies Act / Projet de loi 37, Loi modifiant la Loi sur les agences de recouvrement.

**The Chair (Ms Marilyn Mushinski):** Good morning, ladies and gentlemen. This is a hearing to consider Bill 37, An Act to amend the Collection Agencies Act. Do I have a motion to approve the report of the subcommittee?

**Mr Garfield Dunlop (Simcoe North):** So moved.

**The Chair:** We will read it into the record.

If you look at clause 8, "That a background report be prepared by the legislative research officer by Friday, February 4, 2000, and distributed to all members of the committee, and that a summary of the oral presentations be provided to the committee upon the completion of public hearings," this was added on the assumption that we would probably be holding one or two days of hearings on this matter. Given that we have just scheduled today to deal with this, I am recommending that we drop this component. Is the committee in agreement with that? OK.

Mr Dunlop, would you read the entire report of the subcommittee for the record, please.

**Mr Dunlop:** "Your subcommittee met on Wednesday, January 19, 2000, to consider the method of proceeding on Bill 37, An Act to amend the Collection Agencies Act, and has agreed to recommend:

"(1) That the committee meet on Wednesday, February 16, 2000, and, if needed, on Thursday, February 17, 2000. The hearings will take place in Toronto and/or the Niagara region, with the final decision being based upon the list of requests to appear. The Chair and the clerk of the committee are authorized to determine the committee's meeting dates, time and locations.

"(2) That the committee invite the Minister of Consumer and Commercial Relations, or his designate, to make an opening statement to the committee on Wednesday, February 16, 2000, for 15 minutes. If, and only if, the minister or designate makes an opening statement, the

two opposition parties will each have 15 minutes to make a statement.

"(3) That the deadline for receipt of written submissions be 12 noon on Tuesday, February 15, 2000.

"(4) That a press release be prepared and distributed providing notice of the public hearings. Notice of hearings is also to be placed on the parliamentary channel and the committee's Internet Web page.

"(5) That the deadline for the receipt of requests for those wishing to make an oral presentation be Wednesday, February 9, 2000, at 5 pm.

"(6) That time for those requesting to make oral presentations be allocated on the following basis: 15 minutes per presentation.

"(7) That the Chair and clerk of the committee be authorized to schedule witnesses and to make whatever logistical arrangements that are necessary to facilitate the committee's proceedings. The Chair and the clerk will endeavour to accommodate any witnesses that make a late request to appear.

"(8) That a background report be prepared by the legislative research officer by Friday, February 4, 2000, and distributed to all members of the committee, and that a summary of the oral presentations be provided to the committee upon the completion of public hearings."

**The Chair:** Can I have a vote from the committee? All in favour? Opposed, if any? That carries.

FIRST DELAWARE  
CREDITORS ALLIANCE LTD  
GE CANADA

**The Chair:** It's not quite 11 o'clock yet and the first public delegations were scheduled for 11. Is it the wish of the committee, with the delegates' concurrence, that we proceed a little earlier? OK.

**Mr Dave Levac (Brant):** Proceed.

**The Chair:** Mr Sellors, are you in agreement with that?

**Mr Ian Sellors:** Yes.

**The Chair:** Each of you has 15 minutes to make your presentations, including any questions that committee members may have of the delegations.

**Mr Sellors:** My name is Ian Sellors. I'm appearing before you in my capacity as president of First Delaware Creditors Alliance. I am accompanied by Rose Baldinelli, a valued employee of First Delaware, on my right;



Michael Davies QC, vice-president, general counsel and secretary of GE Canada on my left; and on my extreme right, Bob Weese, vice-president, government and external relations, GE Canada.

I have been in the credit collection industry since 1972. Over the years, I have gained a global perspective on the industry as I have enjoyed the privilege of working throughout North America, the United Kingdom and Australia. I have included a copy of my biography as part of my presentation. I might add that I am also a two-time past president of the collection industry association, the Ontario Society of Collection Agencies.

From a corporate perspective, First Delaware commenced operation in Fort Erie in 1995. We operate a centralized call centre supported by modern technology and are licensed as a collection agency in all provinces and territories, with the exception of Quebec. In Quebec, we have a strategic business alliance with a local Montreal company.

When GE Capital acquired our Buffalo-based sister company, Great Lakes Bureau Inc, in 1997, it also obtained an option to purchase First Delaware. Great Lakes Bureau currently provides technical and related corporate services to First Delaware through a general services agreement.

First Delaware offers clients a full range of receivable management services on an international basis, including contingency collections, outsource solutions and debt purchase. Our target markets include governments, banks, credit card, telecommunications and retail credit companies.

In 1999, First Delaware revenues totalled approximately \$6 million, the majority of which was generated from United States accounts owned by our sister company.

We have expanded from an initial base of 50 and currently employ in excess of 150 personnel. We are targeting further expansion to at least 300 people. Many of the jobs will be created as a result of business that is presently being collected by our sister company in the United States. These jobs are incremental positions that do not exist anywhere in Canada.

The sale of our company has been delayed because of the foreign ownership prohibitions contained in the Ontario Collection Agencies Act. Interestingly enough, many of Ontario's Canadian-owned collection companies are doing business in the United States. It is also interesting to note that Ontario is the only province with foreign ownership prohibition.

The passage of Bill 37 will reduce red tape, repeal an outdated and unwarranted restriction to competition, remove an impediment to investment and job creation, and help to position Ontario to attract other international call centres. It will also contribute to harmonizing Ontario legislation with corresponding legislation in all other provinces and territories.

The Niagara region has targeted the establishment and growth of call centres as a key component of their regional growth strategy. Niagara College currently offers

a call centre course. We are in the process of developing a relationship that will maximize opportunities with Niagara College, both for students and graduates. We expect that Niagara College will play a very important role in our future growth.

Over the past several months, we have consulted with a variety of members and have received their support and encouragement. Additionally, we have received the support of the Ministry of Economic Development and Trade and, of course, the Ministry of Consumer and Commercial Relations. We have also met with the largest industry association, the Ontario Society of Collection Agencies, with the acronym of OSCA, a group of 45 firms, all but two of which, we believe, are Canadian-owned. OSCA is not opposed to Bill 37.

At this point, I would like to introduce you to a long-term employee, Rose Baldinelli, who will provide you with her insight.

1100

**Ms Rose Baldinelli:** Good morning, everyone. Again, my name is Rose Baldinelli. I am currently an employee at First Delaware Creditors Alliance. I have been employed since 1995 when our doors first opened in Fort Erie. I have also grown up in the Niagara region where I actively participate in many community events.

My actual education and expertise is in the field of correctional services. I have worked in several group homes and have also been a supervisor in an open custody facility in the Niagara region.

I'm an original employee of First Delaware for many reasons. I have found a career in the collection industry to be very challenging. I have been continuously encouraged to learn new job skills to maximize my productivity and hence my experiences with First Delaware have been very rewarding. I have witnessed the growth of a company that has increased the employment rate in the area, a company that has provided the skills and training necessary to succeed in today's workforce and a company that has provided me a salary that is greatly increased annually.

I'm speaking on behalf of many of my colleagues, including management, that enabling us to expand will bring nothing but positive change for individuals at First Delaware, as well as the community they live in. To have GE purchase our company would mean expansion, job security and job opportunities, and they may create opportunity to grow.

As a final thought, I feel that changing this law will strengthen the economy in the Niagara region and give an already large company the capacity to create additional jobs for our area, as well as enhanced job security at First Delaware. Thank you.

**Mr Sellors:** Thank you, Rose. At this point, I'd like to turn it over to Bob Weese, vice-president, government and external relations, GE Canada.

**Mr Robert Weese:** I thought it might be useful for the committee to know a little bit more about GE in Canada as part of the background to this particular issue.



GE Canada is a part of the General Electric Corp, headquartered in Fairfield, Connecticut. GE has been in Canada now for almost 110 years, when Thomas Edison, soon after he founded the US company, came to Canada, found some Canadian investors and bought the plant in Peterborough, which is our mother plant and where we still manufacture motors and part of our power systems equipment.

All the GE businesses are now in Canada in one way or another. Those businesses include lighting and appliances—the Camco plant in Hamilton is our appliance affiliate in Canada—power systems, aircraft engines, plastics, medical systems, transportation systems—I know I'm going to miss a few because I'm just doing this from memory—NBC, the National Broadcasting Co, which is one of the GE businesses, and of course GE Capital, which now represents almost 50% of the whole of GE.

All of those businesses are represented in Canada in one way or another. We have 15 major manufacturing plants in Canada, half of which I would guess are in Ontario. We've got 150 sales and service locations across the country, a total now of about 11,000 employees, 6,200 of whom are in Ontario, and our revenues last year in Canada were just about \$5 billion.

We're active in the communities where our offices are located through charitable contributions and through the efforts of our GE volunteer society, the Elfun Society. The company encourages its employees to get involved in community volunteer activities, which we do through the society of GE volunteers, who do mentoring and other community projects, often with some company money to support their efforts.

We've been very successful in Canada over the last few years. We've been growing at an average annual rate of about 12%. Both our manufacturing businesses and the GE Capital businesses have been growing. The two major things that have characterized our operations in Canada recently have been the rationalization of our manufacturing plants, so that instead of producing a full range of products just for the Canadian market, we're now specializing in all of our manufacturing facilities in a smaller range of products where we can be globally competitive. We're getting major new investments in those plants and exporting most of that product now to North America or to the world. We've had recent major investments in our Oakville lighting plant, the Peterborough motors plant, the Camco plant in Hamilton and other places, and we've also made a couple of significant acquisitions in Ontario in the last couple of years.

I mentioned that GE Capital now represents just about 50% of the whole of GE, and that's the case in Canada too. Sixteen of the 28 divisions of GE Capital are now in Canada and have been doing very well here. These various divisions of GE Capital are niche businesses that provide alternative sources of financing, often to small and medium-sized businesses.

We've also been involved in a couple of fairly high profile operations recently. We were involved with

Eaton's. We became the major financial supporter of Eaton's as it was going through its difficult period and we worked closely with them. We are also the major creditor of Canadian Airlines and have just reached agreement to help restructure the debt of Canadian Airlines.

I guess the bottom line here is that our proposed acquisition of First Delaware Creditors Alliance is very much consistent with the growth of GE Capital in Canada and with the growth of GE in Canada, and we look forward to being able to complete that acquisition and to expand that office in Fort Erie.

**Mr Sellors:** Thank you, Bob. I have included a three-page document in my handouts entitled *Myths and Realities*, as part of the presentation that I provided to you. We prepared this document to answer or clarify any questions which you may have.

In summation, I would like to take this opportunity to solicit your support of Bill 37, as I believe it will have a positive impact on jobs, both in the Niagara region and possibly throughout the province. Thank you for your interest.

We would be pleased to answer any questions that you may have.

**The Chair:** Thank you, Mr Sellors.

**Mr John O'Toole (Durham):** Thank you very much for a very comprehensive presentation and, I might say, endorsement. What's most impressive is to have Rose here expressing the view of the real benefits for real people. I think that's absolutely commendable that you've taken it. My background information, Mr Sellors, is that you've also consulted and had wide endorsement with those partners and across the sector in the collection group. Is that the case?

**Mr Sellors:** Yes. The history of that communication dates back to the fall of 1998. Most recently, in January, there was a vote on this particular issue presented to the members, the result of which determined that OSCA would not be opposed to making this change to the Collection Agencies Act.

**Mr Peter Kormos (Niagara Centre):** First of all, let me indicate that you've been very generous in terms of briefing me. I spoke with you on a couple of occasions during the course of this. Am I correct, though, that employees of this type of operation aren't covered—here again I'm showing my age—by workers' compensation?

**Mr Sellors:** Perhaps I could answer that, Mr Kormos. I understand that service employees of banks and financial institutions are not covered by workers' compensation, although the company has extensive insurance that covers all of our employees.

**Mr Kormos:** The reason I ask is because I acknowledge, for instance, that where I'm from, Welland, Canadian Tire Acceptance is now one of the biggest—I think it's the second-largest employer in the city. I get a lot of people coming into my office and one of the big problems is carpal tunnel syndrome with older employees. When people are younger than I am, they do OK.



Would you support our efforts to ensure that workers of financial institutions receive the same workers' compensation coverage as other workers do?

**Mr Sellors:** Bob, do you want to take that?

**Mr Weese:** I don't think we would oppose that. Obviously a lot of our operations are covered. Employees in many of our operations are covered by workers' compensation. Where that's the case, we cope fine and have a pretty good record, I'd like to think, in terms of our health and safety. If the law required us to have our employees at Fort Erie covered by workers' compensation, I don't frankly think that would be a huge a problem for us.

**Mr Kormos:** Great. So you'll join with me in that effort?

**Mr Weese:** I have a few other things to do, Mr Kormos, but we wouldn't vigorously oppose it.

**Mr Kormos:** I'm here for you today, Mr Weese.

**Mr Weese:** I'm glad to hear that.

**Mr Kormos:** Will you be there for me?

**Mr Weese:** We certainly won't oppose it.

**Mr Kormos:** Thank you very much.

1110

**The Chair:** Any further questions?

**Mr Levac:** Thank you for the presentation. I have a few questions, but I'll try to be very brief and make them easy to answer.

You indicate in your brief that in terms of the myth, the jobs are low-quality, and the reality is that the jobs in Fort Erie are not minimum-wage jobs. They pay at least \$10 per hour plus benefits. Can you explain the benefits?

**Mr Sellors:** The benefits that are provided to all our employees include health, medical, dental and life insurance benefits. Perhaps the most important thing is that although the jobs do have a minimum entry level of \$10 an hour, we prefer to hire people who don't want to be at the minimum, because there is a very large and important incentive component to those jobs. I think Rose can testify to that. If Rose depended on her salary, she certainly wouldn't enjoy the lifestyle that she does. It's only through her good efforts that she takes advantage of the upside opportunities offered by the incentives.

**Mr Levac:** I want to stay on that for a moment in terms of the jobs. It may or may not be a myth that there is a large turnover in the industry. Is there a large worker turnover in the industry?

**Mr Sellors:** I think there is in the industry. I've been in the industry for a number of years, and it's always been a challenge for management. Some management really took an interest in it and others didn't. When I joined First Delaware, I was delighted to understand what their training program was. At that time, it was a one-week classroom and then a one-week incubation period. So we had a two-week investment in employees before they started to be productive.

We have a new program that we hope to roll out as early as next week—I don't want to be held to that, but certainly by March—where we will extend our one-week

classroom to a two-week classroom and subsequently a two-week incubation period.

We are very mindful of the turnover. We're attacking it aggressively, and we want to increase retention. Our objective is to increase retention. Looking at statistics as recently as yesterday—at our staff levels right now—we seem to be losing people at a rate of about 10 a month and we're adding about 40 a month right now. That's on a staff of roughly 150. I think we have made a real mark in the training programs we have, not only as a company but I believe they are superior to most of our industry colleagues. Number two, the management team is mindful of retention and is working tirelessly to improve the retention level.

**Mr Levac:** Is there a standard practice regulation within the industry, like a self-regulating body? In number 6, you made a comment on the myth that US collection agencies employ disreputable practices. I wouldn't make that assumption, but we have heard stories of some people having those problems. Is there a standard practice within or a self-regulating body?

**Mr Sellors:** There is not a self-regulating body, Mr Levac. Basically, the industry is regulated by the Ontario Collection Agency Act as part of the Ministry of Consumer and Commercial Relations. The industry association, the Ontario Society of Collection Agencies, which some of the collection agency corporations are members of, has certain rules and regulations as well. What drives our business is compliance with existing regulations and a high level of integrity. That high level of integrity can only be enhanced with the involvement and the investment of GE Capital.

**Mr Levac:** I hope I'm not dominating. Just a couple of quick ones here. You indicated in number 5, talking about data banks and private information being available to the US, that fears of a lack of privacy protection are groundless. Your argument here makes sense, except for the statement that it's groundless. We now have a person who imitated the President of the United States on a chat line and was finally caught. We also have all of the—

**Mr Kormos:** That's what the President said.

**Mr Levac:** That's what the President says.

I would voice a bit of concern about saying that getting private information is groundless. Would you acknowledge that indeed it is a concern and that we really should be on the lookout to make sure that private information is protected?

**Mr Sellors:** I have no trepidation in endorsing that. I think it is very important and a responsibility of management to ensure that privacy rights are recognized and protected.

With respect to the President, who knows if it's true?

**Mr Levac:** That was confirmed this morning. I just heard it.

**Mr Sellors:** Was it? Okay.

**Mr Levac:** He was on a chat line and some other guy hacked it and said he was the President and carried on the conversation.

**Mr Sellors:** Did he say, "of the United States"?



**Mr Levac:** You indicated in number 7 that there are only a very few relatively small American states that have restrictions on Canadian collection agencies. Would GE be willing to try to discuss opening those markets with those states?

**Mr Sellors:** Michael, perhaps you could respond to Mr Levac.

**Mr Michael Davies:** Yes. The three states we have been able to identify as having restrictions—they require a licence or that applicants be US citizens—are Arizona, Indiana and Nevada. I don't speak for General Electric Co south of the border—I'm with GE Canada—but I think it's something they would likely be prepared to look at. It's not something we have addressed.

**Mr Levac:** I want to assure you that I don't have the concept or the myth that the American markets aren't valid or are not open to us. It's just that if they have been identified, it would be kind of nice to know that somebody is working on behalf of the industry to open it up for our markets as well.

**Mr Davies:** We have checked, and we do know that Canadian collection agencies that are registered in Ontario are also licensed in Buffalo, Idaho, Connecticut, North Dakota, Maine, Maryland, Louisiana and, we believe, also California. We're not aware—and I'm not sure if you are, Ian—of any desire being expressed by members of OSCA to actually be licensed in those three small states. Whether it is an issue within the Canadian—

**Mr Levac:** It may not even be an issue.

**Mr Davies:** It may not be an issue.

**Mr Levac:** I appreciate that.

**Mr Davies:** Certainly, they are licensed and carrying on business in the major states and those near the Canadian border.

**Mr Levac:** My final question is in regard to the reference to your co-operation with Niagara College to design courses. Is there any consideration of the provision of courses and training, or are you aware of any courses in Ontario?

**Mr Sellors:** Niagara College is certainly a target relationship for us. Hopefully it would be mutually beneficial. We're in a rather embryonic stage in our discussions. I've only had one meeting, and it was with Nancy MacDonald last week.

Perhaps that question would be better addressed to Dan Patterson, who will be speaking later.

**Mr Levac:** Surely. Thank you very much for your time.

**Mr Kormos:** This is a 100% acquisition by GE, as was the case with the so-called Buffalo sister company, right?

**Mr Sellors:** Yes.

**Mr Kormos:** I have been very critical of the wages being paid in call centres. Ten dollars an hour for a 40-hour work week comes to \$400 a week. That's somewhere around \$20,000-plus a year. It's hard for us, you see, because the minimum wage of the elected people here is at least \$78,000. Most of us make more than that, and dare I ask what a vice-president of General Electric

makes. I suspect a vice-president of General Electric makes more than members of the provincial Parliament, even on an MPP's good day, even when we had per diems for coming to these committee meetings.

What capacity is there in this industry? Clearly, it's a profitable industry or you wouldn't be getting into it and GE would not be interested in it. What capacity is there to see wages increase beyond this beginning wage of \$10 an hour? Surely, your workers—and I've been in these call centres. They're very computerized. They make sure nobody has idle time. The workers in call centres work darned hard. Surely there's capacity in that very profitable industry to pay wages, even starting wages, beyond \$10 an hour. I appreciate it's not minimum wage, but in my view the minimum wage is an unliveable wage. What does GE have to say about the capacity of this industry—especially now with GE, a big multinational company, owning it—increasing wages?

1120

**Mr Sellors:** Perhaps I could take that, Bob, and I'd appreciate you elevating it.

We're really pleased with the compensation program at our company. You have to remember that the \$10 deals with guaranteed income. All of our employees have an up-side opportunity in terms of additional income from their performance-based compensation programs. I'm pleased to tell the committee today that we have employees who are making in excess of MPPs' remuneration, and we're proud of that.

**Mr Bart Maves (Niagara Falls):** There you go.

**Mr Kormos:** How is their performance pay based, how is it determined?

**Mr Sellors:** It's based on their productivity. It is basically based on efficiency and effectiveness.

**Mr Kormos:** How many of your employees now in Fort Erie, people working in the call centre doing the phones, make more than \$78,000?

**Mr Sellors:** I don't know the specific answer to that, but there are a number of people who are in that range.

**Mr Kormos:** Are these people in management positions?

**Mr Sellors:** These people are not in management positions necessarily; some of them are.

**Mr Kormos:** Some of them are.

**Mr Sellors:** The majority are in collector positions.

**Mr Kormos:** Quite right. You're basing their incomes on the amount of money they collect, pursuing any number of calls, their handling of calls. What capacity, though, is there in the industry to increase the starting wage beyond \$10 an hour? That was my first question.

**Mr Sellors:** I can't speak to the industry; I can only speak to First Delaware Creditors Alliance. However, I think the industry has an interest in ensuring improved retention of employees, trying to attract the best employees to a challenging job. I think individually the owners and operators of companies within our industry would be wise to ensure that they have fair compensation programs for their employees. But I can't tell you specifically what their intentions are.



**Mr Kormos:** Can GE tell us?

**Mr Weese:** The only thing I would add to what Ian said is, like every other business, his business operates in a market environment. He has told us that he is interested in attracting good people and retaining them, and that will require him presumably to pay a decent wage. At the other end, he competes for business. He competes for provincial and federal government business, and others. He doesn't set wages arbitrarily; his operation has to be competitive. He operates within a market environment, which has an impact on the kinds of wages he is able to pay and the kinds of wages he must pay to attract bright people like Rose to come and work for him.

**The Chair:** You have about one minute, Mr Kormos.

**Mr Weese:** By the way, Rose may want to say something too about wages in the industry.

**Mr Kormos:** But I've only got one minute.

**Mr Weese:** It's not my choice; I wish you had an hour.

**Mr Kormos:** Your target markets include governments, banks, credit cards, telecommunications. What type of work do you anticipate doing for governments?

**Mr Sellers:** There's a variety of government collection programs on both a federal and provincial level, and now on a regional level, that are associated with delinquent accounts receivable recovery. Generally these programs are let out in requests for proposal and the responses are in the form of proposals that are evaluated. The winning companies are selected and they engage their services to the provider.

**Mr Kormos:** So the next time I'm delinquent in my property taxes, I'm late paying them, it could be you, Miss Baldinelli, on the phone.

**Mr Sellers:** We didn't want to talk about that. We can do that off-line, Mr Kormos.

**Mr Kormos:** Thank you kindly.

**The Chair:** Thank you for addressing the committee this morning.

#### WAYNE REDEKOP

**The Chair:** The next speaker we have on the list is Mayor Wayne Redekop. Good morning, Mr Mayor.

**Mr Kormos:** He is a hero in the region, by the way. He is a veritable hero because he's fighting the amalgamation. He's struggling and being very successful in maintaining autonomy for the good people of Fort Erie.

**Mr Wayne Redekop:** Of course, before you slaughter the lamb, you always prepare it, and I presume that's what Mr Kormos is about to do.

**The Chair:** I am assuming that no member of this great committee will slaughter anyone this morning.

**Mr Redekop:** Perfect.

**Mr Kormos:** We may go after each other.

**The Chair:** Mayor Redekop, you have 15 minutes.

**Mr Redekop:** I appreciate the opportunity to address this committee this morning. This is a matter of significant interest in our community in particular, and I'm sure in many other communities.

I want to encourage you to approve Bill 37 to amend the Ontario Collection Agencies Act. I want to tell you why.

Fort Erie has a population of 28,000 people, but it also has a seasonal population influx of about 10,000 people, pretty well all of whom are non-residents; they're Americans.

Fort Erie has a history of inviting strangers to our town and to our country, literally back to the time when the French traders came to trade with the natives. Then the British came, after the Seven Years' War, and this part of the world became a British territory. We've also invited the Loyalists and escaping slaves to Fort Erie and to our country. Since then we've had a significant relationship with our neighbours to the south. Although the Americans occupied the fort at Fort Erie in 1814 for several months and then blew it up when they left, we still invite our American friends back to Canada. Now annually there is a Friendship Festival which celebrates the relationship of two great countries and two great communities. As you all know, the Peace Bridge spans the Niagara River between Fort Erie and Buffalo, and that's a symbol as well of the relationship between our two countries.

Over the years, Fort Erie has had significant foreign investment to provide jobs to the people who live in our community. Some of the most significant, and by no means all of the major foreign investment companies, would include the Mentholatum company; Eurocopter; Urban Industries; Ronal; Nordic Gaming, which is the company that now owns the racetrack. Those are just a few. We have had major Canadian investors in our community over the years. We still do. Some of the major investors have left—Canadian National railway, to name one; Bell Canada, to name one more recently.

Fort Erie over the past several years has aimed to diversify the economic base of our town to create job opportunities and to expand the local tax base. We are trying to develop the economy of Fort Erie based on economic clusters, such as the aerospace industry. We have six companies which are involved in aerospace manufacturing and technology; pharmaceuticals; general manufacturing; hospitality and tourism; and of course gaming.

Bill 37 will help us to develop a call centre and communications cluster which will create new service sector jobs in our community, and those jobs translate into other spending. The people who will assume those jobs will be residents of Ontario. Some of them live in Fort Erie now and some will come from other parts of Ontario or Canada. They have families. They will expend money in our community on housing, purchases of cars, appliances, other services. They will need plumbers, teachers, mechanics, nurses and lawyers. There are spinoffs from this type of investment.

First Delaware has been a part of our business community since 1995. It is a progressive company, it's a valued employer and taxpayer in our community. It provides an excellent working environment. All of its new



employees receive a professional four-week training program and they also receive refresher training as they become more seasoned employees.

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First Delaware is a good corporate citizen. It takes an active part in our community. It has joined the chamber of commerce. It is a corporate partner making a financial contribution to our economic development corporation in order to market Fort Erie on a broader and an international basis. First Delaware is in the call centre that our economic development corporation is targeting for new business investment to diversify our local economy. It's one of the fastest-growing sectors of the economy in Canada.

The potential economic impact from the collections segment of the call centre will never be fully realized as long as the prohibition on foreign ownership is in place. The world has significantly changed since 1974 when the act was implemented, and Bill 37 will create a fairer business environment in Ontario's collection industry. Ontario will have the same ability to attract foreign investment as other provinces and territories. New investment, especially foreign investment, in this particular portion of the economy, leads to the creation of jobs for taxpayers in communities across Ontario like Fort Erie.

Now, before my colleague and friend from Welland jumps out of his seat, I make a distinction between foreign investment in things such as a service industry, tourism, as opposed to investment in essential aspects of our economy, things like utilities, transportation, health services and culture. Those are fundamental aspects of our life as Canadians. They go to the core of our life as Canadians. So I draw the distinction, and I think there is a significant distinction, between call centres, which provide a service that may or may not be utilized, and essential services.

I encourage you to approve Bill 37 so that we can foster future investment in the creation of good-paying, service sector jobs for the residents and taxpayers of communities across Ontario.

**The Chair:** Do you have any questions, Mr Kormos?

**Mr Kormos:** How much time do we have?

**The Chair:** We have about eight minutes between presenters.

**Mr Kormos:** I've got to tell you, Your Worship, I read the Hansards and I trust other people have as well. They were included in the briefing material that was very well provided.

I've got to confess I had a hard time understanding, based on what Mr Clement, Mr Edighoffer and Mr Renwick said, and my suspicion is that they regarded collection agencies perhaps as part of the family of financial institutions, but my other clearer conclusion was that they wanted to be in a position to ensure that they could regulate the de facto owners, that if you had outside-the-country owners it would be hard to regulate.

Clearly, call centres aren't the issue. The issue around this is because it contravenes the Collection Agencies Act. The bill's going to pass—just count the numbers—regardless of what opposition members want to do, and I

don't find this the most offensive sort of intrusion on Canadian sovereignty by any stretch of the imagination. You might have heard I'm more concerned about the fact that call centres that deal with financial matters are exempt from workers' compensation. So are banks, mind you. I was so happy to hear the comments of Mr Weese earlier today, and I'll make sure he gets a copy of my press release announcing our joint venture before I send it out to the media, or to GE in the States.

I'm also concerned about the fact that we've lost important jobs here, not that any job is unimportant, but in terms of 330 jobs at General Motors. Fleet Manufacturing, as you know, some time ago suffered significant layoffs. Those were high-wage, value-added production jobs. I'm not quarrelling with the call centres and service industry, but do you agree with me—and this is no criticism of the call centre or collection agencies—that \$10-an-hour jobs don't replace the high-wage jobs that we've seen disappearing here in the Niagara region?

**Mr Redekop:** To bring you up to date with respect to Fleet, about three months ago they were in a lockout situation. They had about 420 employees at the time. That dispute was resolved. They've hired about 100 people since then. They've acquired some international contracts; they're trying to get some more. We think there's a great likelihood that their numbers will increase to perhaps 700 within the next several months.

**Mr Kormos:** I hope so.

**Mr Redekop:** Of course, we hope so. Losing an employer of that magnitude—and those are excellent-paying jobs—is important.

But, you know, when I ran for election, one of the platforms was that I wanted to be able to create job opportunities in my community so that if children who grew up in Fort Erie wanted to stay in Fort Erie, they would have a choice. I hope my children will pursue their education, will become well-educated, perhaps professionals, perhaps tradespeople, and they may end up living who knows where, but if they want to live in Fort Erie, I hope they'll have the opportunity.

Not everyone will be a university graduate; not everyone will be a tradesperson; not everyone will have the ability or the opportunity. So a \$10- or \$12-an-hour job at least provides employment for some people who have the ability to fill those jobs.

I agree with you. I heard your comment about the minimum wage. I don't know how people can possibly live on a minimum wage. One person alone can barely live on a minimum wage. You can't possibly raise a family on the minimum wage. These obviously aren't the jobs at the high end of the scale, but we have to have a spectrum of job opportunities for all people. So for perhaps a second wage earner, a single person, a young person who's starting out and trying to get into the employment market—or, as the speakers before said, there are opportunities within this type of business to pursue greater positions with greater pay. I'm not sure how much MPPs earn, but I'm sure it's not insignificant.

I'm trying to look at this issue with a broad perspective, trying to address the issues that are significant to



Fort Erie, which has a history of gaming which other communities don't recognize or appreciate but also has a significant relationship with American individuals and foreign investment.

**Mr Kormos:** My final question: The survey that was sponsored by Fort Erie showed what percentage of Niagara residents said, "Hell no," to Mike Harris's plans to impose megacity on the region?

**Mr Redekop:** Two thirds, and in Fort Erie it was almost 80%. At a meeting last night with respect to governance, there were about 800 people from Fort Erie.

*Interjection.*

**Mr Kormos:** Of course it was irrelevant to this issue, but very relevant to the people of Niagara.

**The Chair:** Mr Kormos, I've allowed you a little bit of latitude by having a second question, but no more.

**Mr Kormos:** And I appreciate it.

**Mr Maves:** Thank you, Mayor Redekop, for coming today and supporting this bill. We have a letter here from Minister Hudak, who's in cabinet today, and he has been very supportive all along of this direction and of this bill. I know you've worked together on that.

You talked at length about our association here in Niagara with Americans, whether it be an American company's jobs in Canada or American tourists coming here to go to the track or to Niagara Falls. I think the problem Mr Kormos has actually goes back to what the previous presenter said—and it was an excellent presentation—that we act in a market environment. You see, Mr Kormos would prefer that we didn't act in a market environment; he'd prefer we were in 1970s Russia. In fact, his government tried to make us into 1970s Russia, between 1990 and 1995. But as far as I know this isn't 1970 and we're not in Russia, and thank goodness for that, because during his term in office we went from about 15% unemployment in 1993, under your government—

**Mr Kormos:** That's not a clever comment; it's a stupid comment, Bart.

**Mr Maves:** —to under 7% right now in the Niagara region. A large reason for that is an improvement in the business climate.

Yesterday Mr Kwinter from the Liberal Party, on another matter, talked about the importance of trade in Ontario. He said that any impediment to trade should be eliminated. That's a far cry from what the Liberal position was many years ago, both federally and provincially, when they opposed free trade, although now that they're in office federally, I note that they've enhanced free trade.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Mr Chair, what's this got to do with what we're talking about?

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**The Chair:** Mr Maves, could you get to the question, please?

**Mr Kormos:** Bart, don't snatch victory from the jaws of defeat. So far you were doing good.

**Mr Maves:** What I'll say to Mr Redekop—

**Mr Kormos:** So far you were doing good and I was on time. Now don't screw up again.

**The Chair:** Mr Kormos, that's enough. Mr Maves, could you get to the question, please. We're rapidly running out of time.

**Mr Maves:** Right. This is, in effect, another removal of an impediment to trade. I suppose that is part of the reason why I think the Liberals are supporting the bill and you and several others would support the bill. Would you concur with that at all? I know you may have different opinions on free trade agreements and so on, but this has definitely been an impediment to the free flow of trade in goods and services. It's a removal of that impediment; would you agree, and support that for that reason?

**Mr Redekop:** It certainly is the removal of an impediment with respect to a small segment of the economy. By the way, in 1970 it wouldn't have been Russia; it would have been the Soviet Union.

**Mr Maves:** The Soviet Union. That's correct.

**Mr Redekop:** I've already indicated that I don't agree that you eliminate every impediment to trade. I've indicated that I have concerns about foreign investment in essential services. I don't consider collection agencies or call centres to necessarily be a threat to our sovereignty or certainly an essential service.

So I agree with your comment to that extent. I didn't actually follow everything that you said, and I'm sure that it wasn't necessary for me to do that. You've heard my comments.

**Mr Maves:** Okay. We appreciate your support. I don't want to live in 1970s Russia or the Soviet Union, by any of the names.

**The Chair:** Mr Levac. We're a little over time.

**Mr Kormos:** That's stupid, Bart. That sort of red-baiting went out 15 years ago.

*Interjections.*

**The Chair:** Mr Kormos, if you wish to—members of committee, if you wish to discuss this, would you discuss it outside, please.

**Mr Levac:** Mr Mayor, just a question of clarification: Are you here representing, by resolution, the entire council, or are you here as mayor?

**Mr Redekop:** I'm here as the mayor. There hasn't been a resolution with respect to this issue.

**Mr Levac:** Is there intention?

**Mr Redekop:** My comments are completely consistent with the economic development initiatives that our community has embarked upon. We're looking very much towards the expansion of this particular sector so that it can participate with the other economic growth sectors.

**Mr Levac:** I appreciate that, and I also appreciate that you are here on that behalf. It's just more of a clarification. Something I've learned lately is that resolution is important so that everyone has an opportunity to say, "This is the elected body," and therefore you're speaking on behalf of the entire community. I will take it as such.



Thank you very much, and I appreciate your presentation.

**The Chair:** Thank you, Mayor Redekop.

# ECONOMIC DEVELOPMENT CORP OF FORT ERIE

**The Chair:** I hope I'm going to pronounce this correctly. Renato Romanin. Did I say that correctly?

**Mr Renato Romanin:** Good job. Yes.

**The Chair:** Good morning. You have 15 minutes.

**Mr Romanin:** It certainly won't take that long.

Good morning. My name is Renato Romanin. I'm the general manager of the Economic Development Corp of Fort Erie. The EDC is mandated by the municipal council to lead the town's economic growth, progress and diversification. Directed by a board of directors drawn primarily from the private sector, its core objective is fostering growth in economic sectors that generate the most potential for jobs, employment spin-offs, new and expanded tax assessment and overall wealth generation.

I am here today to encourage you to support Bill 37, which amends the Ontario Collection Agencies Act.

The EDC facilitated the establishment of First Delaware Creditors Alliance's Canadian operation in 1995. This past year we provided further assistance to relocate them into expanded premises in Fort Erie. The company is a member of the Greater Fort Erie Chamber of Commerce and is a corporate partner of our corporation.

First Delaware operates a call centre, very successfully I understand. One of the economic sectors that we target for new investment is the call centre industry. We see huge potential for diversifying our local economy with new service sector jobs. This focus parallels the regional strategy. Bill 37 will remove a potentially significant impediment to our collective success of attracting new investment in the collections segment of the call centre industry in the future. Bill 37 will facilitate the creation of new, stable, full-time and part-time service sector jobs for residents, young and old, from not only Fort Erie, but also in Niagara and possibly throughout Ontario. Bill 37 will facilitate future increased investment in advanced telecommunications, computer technology and employees. They will undoubtedly purchase goods and services from our local business community.

Viewed from a Canadian perspective, Bill 37 will put Ontario on an equal footing with other provinces and territories to compete for new investment from the collections industry that leads to increased employment opportunities and wealth creation for all Ontario's communities.

In closing, I wish to thank you for the opportunity to make this brief presentation. I also encourage you to support Bill 37 because it will stimulate positive economic benefits for Ontario communities like Fort Erie.

Thank you very much. I would be pleased to answer any questions.

**The Chair:** Thank you, Mr Romanin.

**Mr Levac:** Maybe just a generic question regarding a question I asked earlier of the industry. Do you see a value in having a self-regulating or a minimum-standard practice outside of the Ontario regulations within the industry itself to ensure that the working people of that particular industry are cared for?

**Mr Romanin:** Are you speaking of the collection agencies?

**Mr Levac:** Correct.

**Mr Romanin:** I think that's a prudent move, and I would concur with the comments made by the company representatives here today. That would be a wise thing to do.

**Mr Levac:** Finally, in terms of your own particular department, this presentation you're making now is basically saying: "Yes, I'm in support of the bill." It's not necessarily for one particular member in the industry. It's the idea that you just simply want the regulation so that anyone can have the opportunity to make a presentation in your particular area.

**Mr Romanin:** That's correct. Because that's the provision in other provinces. We feel that Ontario should have a similar provision.

**Mr Levac:** Do you have a sense that, because of the regulation, you have not been able to secure any of this industry at all, because the other provinces have it, and you have evidence that you would have had it, had this regulation not been in place?

**Mr Romanin:** I don't have any specific evidence. I haven't polled my colleagues across the province who may have encountered situations like that. Perhaps we could do that.

**Mr Levac:** So in terms of the argument that this regulation has stopped that type of development, is it fair to say that might be somewhat of an exaggerated stance, versus that we just simply want to open the door for that opportunity?

**Mr Romanin:** I think there were some opportunities that did bypass us because of the provision in the current act, but I think that by changing certain provisions in the act, it will open the doors and it will make us more welcoming to new foreign investment.

**Mr Kormos:** I've got to tell you why we're here, and I'm doing this without even any press in the room. This bill was introduced on December 16, 1999. The Charter of Rights, the Constitution says every Legislature has to meet at least once a year. In 1999, the Legislature met for—how many?—30 days through all of 1999.

*Interjection.*

**Mr Kormos:** There was an election intervening, fair enough. I understand that the lobby for this bill started in April of last year, when this deal started getting put together. That's what the member for Erie-Lincoln says. The minister, Mr Runciman, approaches me and says: "Pete, here's the situation. Mr Weese and his colleagues visited with me."

I said: "I can't get overly excited about this." Do you know what I mean?

**Mr Romanin:** You personally?



**Mr Kormos:** Yes. This isn't the sort of thing, as has been discussed, a bank or a financial institution. This is a collection agency. I don't dislike collection agencies. Insurance companies I don't like at all; collection agencies I'm indifferent about. It all depends which side I'm on.

We had second reading debate on December 22, where everybody agreed to debate it for a mere 20 minutes, I believe. Jim Bradley spoke for the Liberals. I spoke. It was close to Christmas. I had been bugging Mr Runciman, the Minister of Consumer and Commercial Relations, early on, saying: "Get that bill brought on or else you ain't going to see it by Christmas." I had several conversations with Bob Runciman, saying, "Get the bill on, or else we're not going to see it by Christmas." This bill wasn't a big stickler for me. I mean, here we are. Everybody's come here today saying basically the same things you are. Right? There's been no opposition. Had there been opposition to it, it would have been piqued my interest.

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We're here because this was a bargaining chip at the end of the session in December. The government gave two days on committee on this because it wanted to run other bills through and because it had waited too long to introduce this bill. That's the only reason we're here. The bill is going to pass in committee. There aren't going to be any amendments to it. It's going to have support on third reading. There's no opposition to it. There's no criticism of the bill. We're here because, notwithstanding my urging to Bob Runciman—because I had spoken with Mr Weese and other players dealing with the transaction, saying: "It's not going to be something that's going to get my fur standing up on end." And here we are today. I just wanted you to know that.

My apologies to all of you, but it was a bargaining chip by the government. They gave two days of committee hearings on this in exchange for getting some—because that's what happens at the end of the year, Christmastime. The House is sitting until midnight. There's a scramble to get things done. Ministers are crawling all over each other, trying to get their bill priority. They're competing like all get out. Mr Runciman, whom I respect and admire, because I've known him for 12 or 13 years now at least and have had a good working relationship with him, obviously had problems getting the bill through.

I was embarrassed. You see, I'm in opposition. You know that, don't you? And I'm going over saying: "Bob Runciman, get the bill on, for Pete's sake. It's not going to clear by Christmas." These guys from GE are leaning on me, saying, "Co-operate." I'm saying, "Fine, I'll co-operate." I checked out my constituency. I talked to COMER, the Committee on Monetary and Economic Reform, because this would be the sort of thing they would be interested in if it were of concern. For them, again—it wasn't like a bank. It wasn't the sort of thing that Mr Redekop, the mayor, talked about that should attract our interest. So here we are, as I say, without even

any press. That's a disappointment for some of us. It prevents my exchange with Mr Maves from ever being exposed to the public.

**Mr Maves:** Hansard.

**Mr Kormos:** Bart, people don't read Hansard. If you distribute that Hansard in my riding, my popularity will go up another 5%.

**Mr Maves:** You're probably right.

**Mr Kormos:** So here we are. That's why we're here. Thank you very much for coming. It's good to see you again. Good submission.

We're going to have clause-by-clause shortly, are we, Chair?

**The Chair:** We'll entertain that, but—

**Mr Kormos:** If there are other folks, have the other folks make their contribution.

**Mr O'Toole:** Thank you, Mr Romanin. Mr Dunlop would like to make a comment as well.

Just out of respect for the people who have attended today, as well as the members from all sides, I think it's important for our common economy to work in co-operation. I commend you, your mayor and the economic development people for working with First Delaware and GE Capital to make this happen, because it is about real people and their lives. This small impediment, however trivial that might be—it is important to remove those barriers for real people.

It may sound overly sincere, but I believe genuinely that Mr Hudak and all of the people involved—Mr Sellors—all played a very important role in creating an opportunity for perhaps 300 people. That's a real success story. Each member here should take credit for that. I thank you for taking the time out of your busy day. Out of respect, I think that's why we're here as well.

Mr Dunlop may want to say something.

**Mr Dunlop:** I just had a quick question. What is the unemployment rate in the Fort Erie region?

**Mr Romanin:** We don't have specific statistics for unemployment because they're gathered on a regional basis for the St Catharines-Niagara CMA. We think it's around 8%. It's usually a point or two higher than the rest of the region, and the region sits around 6% or 7% now, so a couple of points higher than that.

**Mr Dunlop:** The province is around 5.6%, so it's quite a bit higher than the province, then, in this area?

**Mr Romanin:** It's a bit higher than the provincial average.

**The Chair:** Thank you very much, Mr Romanin, for being here this morning.

DOUGLAS MARTIN

**The Chair:** The next speaker is Mr Douglas Martin, regional councillor.

**Mr Douglas Martin:** It's my pleasure to be here. I'm actually here on behalf of myself as the regional councillor for the municipality of the town of Fort Erie. I'm also here on behalf of Debbie Zimmerman, the chair of regional Niagara, who wasn't able to attend this meeting.



I believe, in opening up, that Mayor Redekop indicated the history of the town of Fort Erie and the foreign investment in the town of Fort Erie. Being in a border community, we're not as fearful, shall we say, of foreign investment as maybe other areas of the province would be in that we have dealt with and lived with foreign investment. Geography has dictated that we are so close to the United States especially that I think we have a clear understanding as to maintaining our own identity and are not as fearful of losing it as maybe some other areas of the province.

I'm here to speak on behalf of the Niagara region, with the support of NETCorp, the Niagara Economic and Tourism Corp, at the regional level, in support of Bill 37, An Act to amend the Collection Agencies Act. I've provided a brief for the members and I'll briefly go through it, if I may.

In the Niagara region, we see this as essentially being more jobs for the Niagara region. The acquisition of Great Lakes Receivable Management Corp by GE Capital will result in additional jobs in Fort Erie. It is my understanding that Great Lakes started their operation in Fort Erie with 50 employees and now they have 150 and target to achieve a workforce of 300, with the potential for significant further growth.

Niagara supports the view that creating a level playing field in Ontario for the collection agency industry will result in the creation of a significant number of new jobs, as the industry continues to expand right across the region itself.

The call centre industry is important to the Niagara region in that the call centre industry is one of Canada's fastest-growing industry sectors, with a compound annual growth rate of 15%. The current value of the call centre technology market is estimated at about \$1 billion. As of 1997, it was estimated that there were 40,000 call centre operators in Canada, employing about 175,000 people.

Ontario has the largest concentration of call centres in Canada, generating the most revenue and employing the most people. There are more than 3,300 call centres with 10 or more agents. The industry employs approximately 20,000 people, and the growth of call centres is expected to greatly outpace even Ontario's estimated annual growth rate of 3.6%.

The call centres are an investment opportunity for the Niagara region. The Niagara Economic and Tourism Corp, as part of its investment marketing strategy, has targeted the call centre industry as a sector for significant growth. Let me tell you why.

Sixty-five per cent of Canada's call centre operations are located in Ontario. Niagara is a key contributor to Ontario's dominance in this industry sector.

Ontario is home to Canada's largest telephone companies. A co-operative venture between the government of Ontario and Bell Canada established the Call Ontario Team to initiate and support call centre attraction to the province.

Niagara is integrated into one of the most sophisticated, fully digital telephone communications structures

in North America, with the capacity to support major future call centre developments.

The Call Ontario KPMG/Boyd study ranked Welland-Niagara as the municipality with the lowest call centre operating costs for cities with a population of less than 750,000.

Niagara's educational institutions have led Ontario communities in providing educational and training programs to assist call centre companies in meeting their human resources requirements.

Our strategy, then, includes expanding marketing efforts to attract national and international call centres and their supplier companies to the Niagara region and to strengthen the alliances between educational industries and call centre employers to ensure an ongoing supply of trained workers to support the growth rate in this industry sector.

The importance of foreign investment in Canada: Foreign investment is important to Canada, to Ontario and to the Niagara region. It's my understanding that Ontario is the only province in Canada with restrictions on foreign ownership of the collection agencies.

International investment creates jobs. Today it is estimated that international investment in Canada accounts for more than one out of every 10 jobs. In the future, it will become even more important as critical links are established between Canada and the growing world economy.

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Foreign direct investment in Canada in the third quarter of 1999 reached a record level of \$12.6 billion, largely due to the acquisition of Canadian firms and other investments by US investors. It is essential, therefore, to create and sustain a climate in Ontario that is conducive to foreign investment.

As part of our investment marketing strategy, the Niagara Economic and Tourism Corp has targeted the international marketplace, and the United States in particular, as a primary source for new investment. Restricting foreign ownership in Ontario-based collection agencies sends the wrong message to the investment community. Over the long run, it would also result in the loss of investment opportunity and adversely affect our ability to create much-needed jobs in the Niagara region.

In my view, amending the Collection Agencies Act to remove limits on foreign ownership in Ontario collection agencies will not only bring provincial legislation in line with the rest of Canada but, more importantly, will create a stimulus for new investment and economic growth in the Niagara region.

Thank you very much.

**The Chair:** Thank you, Mr Martin. Questions, Mr Kormos?

**Mr Kormos:** Fort Erie, population of—

**Mr Martin:** Twenty-eight thousand. That's the census population. As the mayor indicated, our full population is around 40,000.

**Mr Kormos:** So one of the region's smaller communities, right?



**Mr Martin:** Yes.

**Mr Kormos:** A long history in its own right. The mayor talked about the unique qualities of Fort Erie, with its historical role being on the border. That was a fair comment, wasn't it?

**Mr Martin:** Yes.

**Mr Kormos:** And a little bit higher unemployment than the rest of the region.

**Mr Martin:** We're basically in line, I think, now. We're up and down, because at one time I think we were mostly regulated on large industries, especially the fleet, the Horton CBIs. Now we're looking to expand our employment base to include this type of opportunity.

**Mr Kormos:** The fleet was a little bit cyclical from time to time.

**Mr Martin:** Yes.

**Mr Kormos:** But one of the lowest property tax rates in all of the region.

**Mr Martin:** We tend to think so, yes. We're about second or third in line.

**Mr Kormos:** So here's a little, small Ontario town—think about that, Chair—with a unique history. I have some family in Fort Erie. Boy, people identify. They're Fort Erieans. So their people are community-proud, they stick with each other, they've got an incredible arena and city hall for a small town—you should see it, Chair—built between 1990 and 1995, when the provincial government was sharing those sorts of capital costs, notwithstanding the difficult economic times of the recession. And among the lowest tax rates in all of the region. By God, I hope Fort Erie is there not just this year but for our grandkids and great-grandkids to enjoy as well. Thank you very much, Mr Martin.

**Mr Martin:** Just in clarification, we like to think of ourselves as the fourth-largest municipality in the region.

**Mr Maves:** Thank you very much for your presentation. Actually, on that line, we had a presentation yesterday in the committee about industrial tax rates. It showed that Niagara region tax rates were all around 9%. I know that a lot of people in the industrial community—the General Motors, the Hayes-Danas and TRWs—for about two years now have worked with the Chamber of Commerce and some of the municipalities to get a recognition of that problem, the problem that it poses for current businesses. Can you talk about some of the steps the region has been taking to address that?

**Mr Martin:** If you're referring to the tax ratio inequities that we have in the region, the region has, over the last two budgets, utilized an initiative that we've taken the assessment growth within the region and we've utilized a portion of that of the residential to lower the industrial tax base. We're helping to reduce the burden on the heavy industries, the large industries especially, to attract more of that type of industry to Niagara, and not only that but to maintain the industry that we have in Niagara. By reducing that, we're demonstrating to them that we are willing to work and wanting to work with them to maintain the employment base that we have here.

**Mr Maves:** One of the benefits of having the province on the same assessment system was that it allowed people to actually compare tax rates for the first time and really compare apples to apples.

**Mr Martin:** That's correct.

**Mr Maves:** The region has rightly, I would think, recognized that we have a problem with industrial tax rates, and they are actually matching a provincial cut. Since we took over, industrial property tax rates from the school boards, which used to set them—we're actually reducing the rates by 33% for industries in Niagara as we lower that portion of the industrial tax rate which the province now controls. In fact, the program that the region is availing themselves of is actually matching our reductions and therefore speeding it up. So that reduction will take place now in how many years? Is that at eight?

**Mr Martin:** We're looking at five years.

**Mr Maves:** Excellent. Thank you very much.

**Mr Levac:** Welcome, Mr Martin, and thank you for your presentation. I would ask the same questions I asked the mayor. Did you come here by resolution or representing the region?

**Mr Martin:** We didn't come by resolution. We're coming in support of this bill because, I guess, as the region representatives we feel that this is a significant investment into the municipality, especially in Fort Erie, and we'd definitely be supporting it. We haven't, in effect, passed it as a resolution at a regional council meeting though.

**Mr Levac:** But it's fair to say that you represent the region as the voice of the citizens.

**Mr Martin:** Certainly.

**Mr Levac:** The first presentation, brought to us by First Delaware, indicated a sound strategy of discussing with education, trying to help the educational institutions. In one of your bullets it is said that one of your strategies is to strengthen the alliances. Have you had an opportunity to meet with either of the proponents—you mentioned Niagara or Brock or whatever. Have you had an opportunity to kind of facilitate meetings?

**Mr Martin:** Not on this specific subject, but Mr Patterson will be speaking later in the program and I think he will identify the initiatives that Niagara College has been working with to try and identify the types of jobs that are available within the Niagara region and to provide the opportunities for students in Niagara to avail themselves of those opportunities to remain in Niagara. Mayor Redekop indicated that we want to make it available for our children to stay in this area. I think those are the initiatives we're looking for and I think Niagara College is well in advance of trying to promote those types of programs to allow those people to stay here.

**Mr Levac:** I guess maybe I'll go a little further and try to put words in your mouth: The region would facilitate that. They would be a partner in that.

**Mr Martin:** Absolutely. We have partnered with Niagara College on many ventures. We're looking at the police services, that we are venturing to—the range, the training technology for our Niagara regional police at



Niagara College. We'll continue to do so and work with Niagara College in every way possible.

**The Chair:** Any further questions of Mr Martin? Thank you very much, Mr Martin.

## ONTARIO CHAMBER OF COMMERCE

**The Chair:** The next speaker is Mr Robson, president and chief operating officer of the Ontario Chamber of Commerce. Good afternoon, Mr Robson.

**Mr Douglas Robson:** Chair, honourable members, thank you very much for allowing me to make this presentation today. I've talked to a number of you in other committees in the last couple of weeks, so if some of what I have to say is repetitive I apologize.

For those of you who aren't familiar with the Ontario Chamber of Commerce, it's a federation of 160 local chambers of commerce and boards of trade. We have over 500 direct corporate members and we represent all types of businesses in all sectors of the economy throughout this province. Through our federation, we currently represent over 55,000 businesses totally in the province. We have been the voice of business since 1911.

We believe that the overall fiscal and economic goal of the provincial government should be to make Ontario's economy the leading economy, the most competitive economy. To achieve this goal, we feel the government must focus on three critical areas: creating a competitive fiscal and economic climate; maintaining excellence in education; and investing and maintaining Ontario's infrastructure.

The Ontario chamber supports Bill 37 because it helps create a more competitive economic climate in Ontario and it opens up the possibility of creating new jobs in this region. Ontario is the only province or territory that prohibits foreign ownership of collection agencies. The bill removes this requirement but it still requires that a collection agency be incorporated in Canada. We believe this is a sufficient condition to deal with any problems that may arise.

The Ontario legislative restriction goes back to 1974, a time when many artificial restrictions were in place to protect Canadian businesses. We feel times have changed. This restriction is clearly outmoded and inconsistent with the current business climate and, we believe, with the outlook of the current provincial government. The Ontario chamber believes that this legislation is another example of the government's drive to eliminate red tape and to allow business to grow and prosper in Ontario and to create jobs in Ontario.

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We at the chamber support the work of the Red Tape Commission. We believe the commission should be continued. We believe the government should make the commission permanent and should mandate it to conduct a biannual review of regulations to ensure they are still relevant and not a burden on business. This bill is an example of the type of work that could be the responsibility of a permanent Red Tape Commission.

The amendment proposed in this legislation should help create more jobs in this industry and in this part of the province. A competitive fiscal and economic climate combined with Ontario's highly skilled labour force makes Ontario a natural location for businesses.

It is our understanding that if this bill is passed, there could be a major expansion of the industry, with more than 250 jobs being created. These jobs are not being created because of some government temporary make-work project. The government is not being asked to give taxpayers' money to businesses to support the new jobs. These jobs are being created by simply removing an anachronism to the current economic climate. As I said, these jobs are not costing the taxpayers of Ontario. In fact, the more jobs created, the more taxes get paid to all levels of government and the more money gets spent in the local economy.

Keeping jobs in Ontario is the responsibility of all of us. It is the government's responsibility to continue to create a competitive fiscal and economic climate. This government has done a great deal to improve the fiscal and economic climate in Ontario, but we feel it can always do more.

I mentioned that it is the responsibility of all of us to keep and grow jobs in Ontario. Our responsibility is to suggest public policy that will continue job creation in Ontario and to provide the occasional nudge, when warranted, to ensure that the government continues to improve the business climate here.

I would like to conclude by reiterating that we support the changes proposed in this legislation. We believe these types of changes will help make our province one of the most competitive economies in North America.

Thank you again for allowing me the opportunity to make this presentation.

**The Chair:** Questions for Mr Robson? Mr Levac.

**Mr Levac:** Thank you very much for the presentation. I just have a question of the Ontario Chamber of Commerce. Specific to this particular bill, are there any downfalls? When you analyze it, are there any areas which you believe (a) haven't gone far enough, or (b) have gone too far?

**Mr Robson:** No, we don't see any pitfalls. Our general point is that we should be open for business. We're an economy that has always depended on outside financing, and partly outside ownerships, to get larger projects going. We, in turn, are traders. We see ourselves as traders. So, in our view, we can't be putting up barriers to investment.

**Mr Levac:** That being said, I'm not sure if you were able to be here for some of the comments earlier, but in our first presentation three states were identified as having trade barriers with regard to this issue. Would you be willing to point those out in the other direction, in terms of our making those changes, maybe seeking that opportunity for those three states to be penetrated by the Ontario market?

**Mr Robson:** We do that sort of thing when we meet with our American friends. We're part of the American



Chamber of Commerce Executives, and when we get into it there, we point out these inequities.

**Mr Levac:** So you are consistently looking for those inequities?

**Mr Robson:** Yes. A quick example that's going to hit us all in the face is section 110, which was a concern two years ago and is probably going to come back and haunt us all again in the near future. That's a cross-border problem for all the chambers.

**Mr Levac:** I appreciate that. Throughout the morning I have heard a couple of words used, and maybe I'll just let you give me your take on this. I have some reservation when I start to hear "harmonize" and "level playing field," not in the context of this bill in particular, because I have the propensity to say that the bill makes sense right now, but the overall philosophy of "harmonization" and "level playing field." A bit of a tweak comes into my head saying, "Where do we draw the line?"

What is it that makes us Ontario versus just a place to do business, what makes us Canadian versus American, and do we even need to have that discussion?

**Mr Robson:** In the context in which you are putting it, my sense is that I deal with the glass being half full. When you talk about a level playing field, I'm convinced that our employees, our businessmen and our investors are every bit as savvy as the majority of traders we are dealing with.

I myself have had experience in international trade. I was chief of staff to Canada's first Minister of International Trade. There are many jurisdictions in this world where other people trade in a way that's foreign to us and that we feel is illegal and immoral. But in terms of dealing with our major trading partner, the United States, for the most part I see us as being equal or better. So I'm not threatened by anything there. I feel we can match them in terms of wits and skill as business people.

**Mr Levac:** I tend to agree with you. I guess what I'm getting at, and I'll be very specific: The mayor indicated his concern for some of our own levels of protective legislation, that some things should not be foreign owned and there should be an area which we hold dear. One of them that I would respectfully suggest to you would be water—certain types of resources—so that we don't simply, holus-bolus, say: "We're open for business. Go ahead and buy all you want or do what you want."

Do you have a comment on any areas that you feel should be restricted?

**Mr Robson:** No. I'm dealing with the general principles, and I don't want to get into specific debate on something that one of my councils may have something strong to say about.

To use the example of water, we have the basic premise that this country and this province should be open for business. Many of us are aware of what a failure FIRA was. It was two thirds of the federal government's paperwork 21 years ago. It had no audit function, and what enforcement provisions were there were meaningless because nobody audited it to see where the people weren't following up on their promises.

My point is simply that we think this country is better than a lot of people may think and that protectionism is not something we can indulge in without some reciprocity somewhere else.

**Mr Levac:** I'll leave it at that, Madam Chair.

**The Chair:** Thank you, Mr Levac. Mr Kormos.

**Mr Kormos:** I'm sorry I missed the first part, but I anticipated what your position was going to be, and that's OK. I doubt that you're a New Democrat. That wasn't a shot at the Liberals when you made the comment about the make-work projects, was it?

**Mr Robson:** No.

**Mr Kormos:** I didn't think so.

Just a little while ago, I was invited down by Physicians for National Health Care, in the States, to speak to some groups, because they're trying to whip up enthusiasm for a public health care system. I also met with the AFL-CIO leadership down there. They were ticked off because they figure that they're in an uncompetitive position with Canadian workers because of the huge cost to an employer, especially in heavy industry, and the automotive industry specifically, to pay for health care costs out of a private, for-profit system and that Canadian workers are in effect less expensive. So when Canadian plants are bidding—of course, I have to be faithful to my folks here. But they were taking some pleasure, in a perverse way, because they would like to have public health care for their workers, in the erosion of health care in Ontario and the rest of Canada, quite frankly, because it would put our workers in a less competitive position than theirs if we had a private health care system.

You certainly agree with full funding of health care, don't you, to ensure that our workers remain competitive and retain their competitive edge?

**Mr Robson:** I'm fully in favour of a fully funded health care program.

**Mr Kormos:** Thank you kindly.

**Mr Robson:** But that's a personal comment.

**Mr Kormos:** That's OK.

**Mr Robson:** I haven't asked the question of our health committee recently.

**Mr Kormos:** I just want to be able to quote you when the time comes. Thank you. I appreciate your being here.

**Mr Robson:** You must realize that I have a conflict of interest there. As someone who has had cancer in the last three years, I know that in a private system I'd likely not be covered. So my bias is pretty obvious.

**Mr Kormos:** Stay healthy.

**Mr Robson:** I'm trying.

**The Chair:** Thank you, Mr Kormos. Mr Maves.

**Mr Maves:** That actually leads me to one of my questions about the upcoming federal budget. I just wonder if the chamber is supporting the province's call for the federal Liberal government to restore the Canada health and social transfers to at least their 1995 levels?

**Mr Robson:** We tend not to get too involved in the federal scene, even though we're empowered to do so. Our chairman did write every federal MP in December with regard to tax reductions. We didn't comment on



health transfers, but the bottom line is that we feel strongly that, federally, there's a lot of room for debt reduction and tax breaks, whether it's EI or personal income tax. We believe the country needs that stimulus.

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**Mr Maves:** Your position is obviously that those would continue to stimulate economic growth?

**Mr Robson:** Yes.

**Mr Maves:** Very good.

I'm glad you mentioned the Red Tape Commission and talked about the success of that. I believe it is our intention to make it a permanent agency. And you're right: This Collection Agencies Amendment Act is something that would have been caught by, and will in the future be caught by, the permanent Red Tape Commission headed by Frank Sheehan.

Are you staying tonight for the annual Niagara Falls chamber dinner?

**Mr Robson:** No, I'm not. I have to go back to talk to an MPP mid-afternoon.

**Mr Maves:** Too bad. We would have loved to have you stay for the Niagara Falls dinner.

Last, if I can get some thoughts about the upcoming provincial budget in a little over a month or so. Have you got any thoughts on that and any directions, maybe similar to the direction of this bill, or any other directions with regard to taxes?

**Mr Robson:** We did make a presentation to the standing committee which Mr O'Toole and others here were part of, so I don't want to be too repetitive, but we feel very strongly that the government of Ontario has to target debt as the thing it should be aiming at right now. Currently, the level of debt in Ontario is about 32% of GDP, and traditionally it has been 15% or 16%. What we are saying is that \$2 billion over four years, I think it is, is not enough of an attack against debt. You're supposed to get your house in order when you have good times. We all know we have tremendous times, and we want to see the Minister of Finance really attack the debt levels. There's room there for him to continue to help education and health care and so on, but I was an observer at the meeting in Hamilton on the weekend, and he said there that it wasn't enough of an attack, so maybe some of the message is getting through.

**Mr Maves:** Excellent. Thank you very much.

**Mrs Bountrogianni:** Given that no one else is necessarily right on focus and target with the issue of the day, I'd like to ask a question directly too, given that I have the opportunity.

My critic role is in post-secondary education, and I was happy to hear that one of the chamber's beliefs is in a strong education system. What is the chamber's or your personal belief on rising tuition fees and how that will affect the economy in the future—and rising student debt, speaking of collection agencies, but I'm saving that question for Mr Patterson.

**Mr Robson:** To be honest with you, that's not something the chamber has gotten into. One of the big targets has been in preschool, where Fraser Mustard is con-

cerned, with the early years; we're very supportive of that. We're concerned about apprenticeship, and certainly concerned about what the curriculum is and teacher testing and so on. I don't know of any discussions that have been held with regard to tuition fees.

I'm personally not as sympathetic as some people are. I'm on the board of a university which I was a student leader at—actually, it's for the second time—and I worked my own way through university. So I think back to what money was worth then and what money is worth now and I don't think the ratios are that different. To some of us who have been out of university for 20 or 25 years, it sounds huge, but then we weren't making as much in the summertime. Students always complain about how much they have to pay for their education, but we know that it's worth it and we know that this country has to have well-educated people to prosper. What I'm in favour of is having systems that allow people to put aside the money and make the money for that.

**Mrs Bountrogianni:** Agreed. Has your chamber talked about the issue of student debt, which is rising, and how that will affect the future economy?

**Mr Robson:** No, we have not. I'm just giving you my personal comments.

**Mrs Bountrogianni:** That might be a nice topic—if you ever want to invite me to have the discussion with the chamber, I'd be happy to do so.

**Mr Robson:** I appreciate it. I'll keep that in mind and pass it on to the education committee. We're a very active group.

**The Chair:** Members of the committee, you have about five more minutes before the next delegation.

**Mr O'Toole:** Thank you, Mr Robson, for coming before the committee. I know the chamber, in all of its functions, tries to monitor government policy and decision-making, and for you to make the effort to come down here on this rather unpleasant weather day is important to support, really, small business. That really is what this bill is about. It is about what you mentioned in your presentation: the removal of red tape and barriers. That's one of the themes of the government.

**Mr Robson:** And one of ours.

**Mr O'Toole:** And of your group. The chamber is always bringing to the government's attention opportunities to remove the barriers for small business. I think we have clearly here all-party, from what I hear, general consensus that this is badly needed. It helps an area that has higher levels of unemployment than the average of the province. If this is what the chamber, the elected local politicians and all parties in the area are trying to do—and for you to take the time I think is very commendable, and thank you very much for that.

**Mr Robson:** Thank you. I appreciate the opportunity.

**Mr Kormos:** Mr O'Toole said something interesting. GE is not a small business, please.

**Mr Robson:** No, but we represent all sizes.

**Mr Kormos:** That's right. But GE is really big business.

**Mr Maves:** American.



**Mr Kormos:** American too—bigger than many countries in the world, and very powerful. Let's not forget that. I'll join it, thank you.

**Mr Robson:** If I may, I've known GE intimately for most of my life. I had the opportunity of having a neighbour who was the executive vice-president of GE for over 20 years. He used to drive me to school every once in a while, so I feel I know a fair amount about it. They've contributed a huge amount to the economy of this country. Back after the war, they had about \$400 million that they did not send south, and with that they financed a whole fleet of tankers that was leased to Imperial Oil, which started marine turbines, marine radar, all sorts of extra industries here. We have big companies and we have smaller companies.

**Mr Kormos:** No quarrel. They do it to make money, and that's OK too, I suppose.

That having been said, what's interesting about this interplay is that, as a New Democrat, I can criticize both the provincial government and the feds, and my colleagues are restricted, you see. They have to constantly defend the provincial government—

**Mr Levac:** Not always, Peter.

**Mr Kormos:** To be fair, some of my Liberal colleagues from time to time will be critical, but they have to defend their Liberal federal government. Even on the rare occasion when New Democrats have formed the government, I have felt free to criticize them. So I have this wonderful luxury here that my colleagues don't share. I wish they could share the freedom that I have.

**Mr Robson:** I have freedom too, because we shoot at everybody's policies.

**Mr Kormos:** Exactly. There you go.

**The Chair:** Thank you very much, Mr Robson, for driving down here.

Mr Patterson, I understand, has just arrived. We'll give you a couple of minutes, Mr Patterson.

**Mr Levac:** Madam Chair, while we're waiting, may we have a quick, open discussion regarding the recess, whether or not we need extra time?

**The Chair:** Certainly, if the committee would like to discuss that for a couple of minutes. We are scheduled for clause-by-clause consideration at 2 o'clock unless I receive direction from the committee to proceed with that earlier or later. If you would like a brief discussion, Mr Levac, that would be fine with me. What is the wish of the committee?

**Mr O'Toole:** Mr Levac, have you made a proposed amendment to the agenda? Then we can talk about it.

**Mr Levac:** Yes. My proposal is to move the time up from 2 o'clock, and I'd be open to that specific time. I don't want to get into a debate about 1:30 or 1:45 or whatever, but just as long as we can have an understanding that if we can move it up, it provides us with an opportunity to do more in-depth clause-by-clause.

**Mr O'Toole:** I would be supportive. I hope that Mr Kormos would look at that for the interest of all members to expedite. We just had the input. There are only a couple of particular sections that amend the bill that I'd be

pleased to follow right through and push it along. Legislative counsel is here.

**Mr Levac:** I understand too—I don't think we're going to see any amendments.

**Mr O'Toole:** I'm waiting for Mr Kormos if I can get him off the record.

**Mr Kormos:** I'm so flexible.

**Mr Levac:** I know that. I think you made a statement that you didn't anticipate any amendments.

**Mr Kormos:** I didn't anticipate any.

**The Chair:** I would suggest, however, that we take a brief break for lunch. I think some of us probably left early this morning.

**Mr Levac:** Fifteen or 20 minutes and then proceed?

**The Chair:** OK. Mr Kormos, is that OK with you?

**Mr Kormos:** That's fine.

**The Chair:** We'll hear from Mr Patterson and then we'll break for a brief lunch and come back after about 15 minutes, which will probably be 1 o'clock, for clause-by-clause consideration.

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## NIAGARA COLLEGE

**The Chair:** Mr Patterson, welcome.

**Mr Dan Patterson:** In the spirit of the guidelines, I will have a formal brief comment to make and allow for questions.

Good afternoon. I am pleased to be here today to tell you that Niagara College is a strong and proud partner in the economic development of the Niagara region, and to assure you that we are willing and able to assist companies and organizations that are poised to grow as a result of the proposed legislative changes that are before you.

Niagara College prides itself on being an enterprising college building skills and knowledge for a rapidly changing world. Our core business and focus are on enabling our students, clients and the community we serve to develop applied skills and knowledge for employment, economic success and responsible citizenship in a global society.

Since the college opened in 1967, we have produced over 30,000 graduates. Today, with campuses in Niagara Falls, Niagara-on-the-Lake and Welland, we are offering nearly 70 post-secondary and post-graduate programs, as well as apprenticeship training and certificates in technical and skills training.

In addition, we meet the specific training needs of industry by providing a variety of customized training and consulting services. Whatever the training needs are, we have expertise to tailor programs and services to meet the very specific requirements of industry.

We are particularly well-equipped to serve Niagara's thriving call centre industry. Four years ago, we established a call centre training lab, which we use to provide customized training for companies and for continuing education students in our call centre management programs. The lab is also utilized by organizations, includ-



ng local charities for fund-raising initiatives and other short-term projects.

In short, Niagara College is ready and able to meet the training needs of call centre companies, such as Great Lakes in Fort Erie, which is expected to create up to 300 jobs, if not 500, as a result of Bill 37.

Areas of training would include customer service, telemarketing, communication skills for telephone and Internet, technology awareness and data application. Training delivery can be flexible in both timing and location to meet the needs of employers.

I would like to thank the committee for the opportunity to share about the very important role that Niagara College plays in our community, and to indicate our support specifically for this legislation and for any reforms that enhance job growth and economic development in the region. I would be pleased to answer any questions.

**The Chair:** Thank you, Mr Patterson.

**Mrs Bountrogianni:** Welcome. My critic's role is colleges and universities, so I was looking forward to asking you a couple of questions. If you can expand a little bit on the program and how it would address the needs of the employees just a bit more, specifically around communication. The reason I ask that is that for every negative call I get about a collection agency, there are 100, 1,000 that are very well done. I get them from students. Mistakes have been made and they have been harassed by collection agencies. So I guess my bias would be to have an interpersonal skills development component for employees. Is that part of the communication skills?

**Mr Patterson:** Yes, very much. The call industry is probably one of the most misunderstood industries currently in our range of economic sectors in the province. I don't know whether the economic development corporation have made their presentation, but this region is particularly earmarked as an area that we want to attract call centre operations to. The set of organizational skills and knowledge that are required can be very complex. But you're right: The whole issue of customer service and interpersonal communications is an area in industry that started up very quickly.

There were some negative images that had been created as a result of that. Hence, employers have come to us to talk about how we can increase the kinds of skill sets that are required for this very complex industry that they're in. So Niagara College has worked very hard with employers, and we have held call centre conferences here in Niagara region and have had some of the leading-edge experts in call centres come to speak to people in this community, and they have indicated that our curriculum is some of the finest they've seen. We've been cited in journals in the United States as having leading-edge curriculum in call centre management. One of the issues indeed that has been identified is that emphasis in the past has been on technology and not enough on the interpersonal skills that are necessary in order to be an important player within that.

**Mrs Bountrogianni:** That's terrific. Do you have any relationship with Brock with respect to this training?

**Mr Patterson:** We have very strong relationships with Brock University in a number of areas. In this particular one we have not specifically. It's now out of our post-secondary programming and now we're into short-term programming, but Brock has a really good communications department and we are working in a number of other aspects with them.

**Mrs Bountrogianni:** Previously my colleague Mr Levac talked about having a self-regulation body. Would you support that among the collection agencies?

**Mr Patterson:** Self-regulation within the collection agency or the broader sector?

**Mrs Bountrogianni:** Whether Brock would.

**Mr Patterson:** I think it's important in all sector development that it be self-regulatory at least at the initial stage, where there are standards and references and benchmarks in which we can judge from a public perspective, from a governance perspective, key performances and judging performances. Not knowing this sector in great depth, my immediate reaction is that self-regulatory would be a helpful process.

**Mrs Bountrogianni:** Thank you, Mr Patterson.

**Mr Kormos:** Thank you, Mr Patterson. Needless to say, I don't agree with you about self-regulation. But you should know that yesterday Don Johnston, who's head of the Niagara College Foundation, was over at the Renaissance Fallsview, where the pre-budget committee met, and I had the pleasure of being there and Mr Maves was there as well with some of his colleagues, and some Liberal members were there. Mr Johnston very effectively made a case for Niagara College's need for adequate funding for capital projects, for renewing the aged infrastructure, expressed gratitude for the NDP commitment to the new campus up on Glendale, which had been announced, of course, in very difficult economic times, but understanding that even in a recession when revenues aren't there, you've still got to continue to invest in young people and education.

Don was hopeful, now that we're no longer in a recession, with an economy that's growing, with revenues that are certainly increasing significantly—I acknowledge that, everybody does; you can't deny it—that this government would see its way clear to assist Niagara College in rebuilding some of the infrastructure, which is old; it's getting old. It was a very effective presentation. Unfortunately, he joined it with a presentation on behalf of the St Catharines Chamber of Commerce by virtue of switching hats during the same half-hour—you can imagine my disappointment, Chair—as well as his endorsement of three mega-cities in the region. That isn't the policy of Niagara College, is it?

**Mr Patterson:** We do not take a formal position on amalgamation.

**Mr Kormos:** I just wanted to hear that view because I was concerned that people might be confused, thinking that Mr Johnston had to switch hats during the course of his presentation.



**The Chair:** Mr O'Toole.

**Mr O'Toole:** Chair, a moment with Mr Barrett as well. Just a couple of things. I think the Niagara College should be complimented. As you know, in my riding, Gary Polonsky is president of Durham College and is working wonderful partnerships. That needs to be said about what we've heard this morning. It's not just the private sector but the academic sector which is very important to prepare people for the world of work. This is a good example that you described that has been endorsed by journals and other experts who compliment you. That's the best form of flattery, imitation, so you're able to work with the industry. I know Durham College does the same thing with York and with Trent University.

To Ms Bountrogianni's comment with respect to the capital needs of colleges and universities—Rob Prichard and a lot of leaders in the educational community have talked about the importance of infrastructure; I'm sure there are ongoing debates right now—as you would know, the SuperBuild Growth Fund of \$642 million has been allocated for the expansion of capital in post-secondary education, which is absolutely critical, and you will probably be part of that. I wonder, have you made an application? Minister Cunningham has recently received applications for those plans. Have you made application?  
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**Mr Patterson:** Yes, indeed. We have two SuperBuild proposals on hand, and we had the opportunity yesterday to speak to Mr Eves and Minister Cunningham about those proposals. They are very important to Niagara College and to our community. We are looking at doubling the size of our Maid of the Mist Centre for Hospitality and Tourism, which is at capacity. Tourism is the fastest-growing sector in the world, and we want to take advantage of that. We have linked up with the hospitality and tourism leadership in Niagara and are building that. We have a major proposal for \$19 million to retrofit a number of our buildings in Welland.

It's key, and I think you have captured the critical link between industry and the college, which the Ontario Jobs and Investment Board has so eloquently articulated. I think colleges are critical to our economic future. When we look at the issue of skills and the importance of those being your competitive edge, having an agile, quick, adaptive education system that can, in this case, deal with call-centre management and attract industry to come here because they have the educational infrastructure available is very important. Similarly in Durham, in your riding, where General Motors and other important manufacturers are, it's important that the institution have very flexible programming available. I think the hallmark of community college education is its ability to work with industry very quickly to build programs that are relevant and linked to the world of work.

**Mr O'Toole:** I compliment you, because it is part of what I would call the knowledge infrastructure. I think the government is taking a new approach to partnerships, and this particular piece admirably demonstrates the importance of that balance of industry, ie GE, an Ameri-

can investment in a local company with the support of an academic institution like yours, and of course by the government, and all members endorsing a small regulatory change. What more appropriate way to create real opportunities for real people? It may be theoretical, but we have here today a real-life model of how working together makes it work for people. It sounds a bit thematic and idealistic, but I think it's quite real. Thank you for coming to the committee today.

I think Mr Barrett had a comment as well.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** My question also related to SuperBuild, and I think you have covered that. With respect to these particular courses, how are they funded? Is it through federal or provincial money? Also, how much do students pay? How many hours do they take to, I assume, receive a diploma of some kind?

**Mr Patterson:** They're all very good questions. It really depends on the target group taking the training. If the students move into post-secondary programming, there is a flat tuition rate of approximately \$1,200. If they're unemployed EI people, we apply for Human Resources Development Canada funding. Some of our students go through that route. The other route is part-time studies in continuing education, where they get certificates, and that is a different tuition scale. The funding for the education sector is a rather complex set of funding envelopes, and the price varies depending on the individual attending the call-centre management courses. In more cases than not, we're getting more into customized training where a company will come to us for up-grading and bringing in new entries, and we will do a fee-for-service. We will cost out the amount of time it would take an instructor to develop a curriculum depending on the individual client's needs.

**Mr Barrett:** Would they get this instruction in a special lab, or can they take it at night in a local high school?

**Mr Patterson:** Again, depending on the level of sophistication—we're very pleased that at our Welland campus we have a state-of-the-art call-centre lab that is equipped with the latest technology. Students get an outstanding introduction to the complexities around technology. We can offer it off-site as well. In the Fort Erie example, we have links with other organizations to develop programming either on location at the work site or in an alternative classroom setting. Our ability to adapt to the circumstances and needs of the individual client is paramount in those discussions.

**The Chair:** Mr Levac.

**Mr Levac:** Welcome, Mr Paterson. Your timing was impeccable. But because your timing was so good, you missed my faux pas and I want to apologize to you even though you weren't here to hear it. I made an assumption that Niagara College was in the States, the Niagara in the States as opposed to your college. My apologies for that.

**Mr Patterson:** No problem.

**Mr Levac:** Just a general comment: It is my joy to hear that these partnerships are being forwarded and looking in different and new directions. Mr O'Toole



made reference to it as being a new idea. If I'm not mistaken, this really isn't a new idea. Community colleges have been partnering for quite a long time. Is that correct?

**Mr Patterson:** Yes. I think the newness lies perhaps in the notion that colleges are much more aggressive with their programming than in the past, but partnerships have been a way of life for colleges.

**Mr Levac:** In terms of these partnerships, I also understand that as it rises in terms of importance to the district and the area, so too they go with the wind, and if service being provided by a college gets fewer and fewer students, they drop that and look to other areas. So it's a very fluid relationship as industries come in and maybe stay for a while, and because of economics and because of decisions made by companies to downsize or right size or change size, that also affects the community colleges.

**Mr Patterson:** Clearly market forces are at play. Our core business is to prepare people for the world of work. Similarly, an institution like Niagara College has to recognize the changing nature of the labour market and the need to adapt in given circumstances.

**Mr Levac:** In hearing that, I also get the sense that, of all the people we have heard from, this particular area of concentration is very strong in this area and has been identified with good study, good research that indicates that for quite a long time we should be counting on those partnerships, the relationship with your college courses and the employment possibilities. Is that fair to say?

**Mr Patterson:** Yes, indeed. In fact, I think the relationship we have with the Niagara economic development corporation and other industry organizations has led to very strong collaborative relationships here in Niagara. Increasingly, the Niagara Peninsula is known as an area where a great deal of co-operation exists for this sort of partnership.

**Mr Levac:** Two last quick points—one that you mentioned earlier, and I want to repeat it to make sure that people on the other side hear this. You made reference to a very complex funding formula in education—the word “complex” was used. Maybe we could simplify that a bit and give a little more autonomy to the local people who need to do that. Would that be beneficial to your college?

**Mr Patterson:** Yes, indeed. If we could have a labour agreement with the federal government, I think that would add to our ability to manage relationships effectively.

**Mr Levac:** So we need a broader sense of co-operation between federal, provincial and municipal and college areas for their improvement in terms of funding?

**Mr Patterson:** We are the only province in the country that does not have an agreement for human resources.

**Mr Levac:** My last question was, is it your understanding that the SuperBuild Growth Fund, which has been referred to the last couple of times, is not new money; it's basically money taken from different areas of the present spending formula compacted into one area?

**Mr Patterson:** I'm not sure. In the end, I suppose, it depends on how you count on this envelope. If you take the leverage of private sector dollars, I think the SuperBuild fund would perhaps exceed previous allocations.

**Mr Levac:** The assumption is that the private sector is going to be putting the new money in and not the government?

**Mr Patterson:** I would need to look at all the data that are available in order to—

**Mr Levac:** That was just my one opportunity.

**Mr Patterson:** If I could just add, on your reference to Niagara University: While I'm not the president of Niagara University, I must say that we have very close bonds. One of the unique things about the Niagara region is our bi-national area. We do programming with Niagara University. We do cross-border education with our colleagues, and I think that strengthens our role in the region.

**The Chair:** Final question, Mrs Bountrogianni.

**Mrs Bountrogianni:** Would you say that if you were awarded the monies from the SuperBuild fund for your two proposals, that would adequately address the influx of students in 2003 with the double cohort, or would it just begin to address that?

**Mr Patterson:** The double-cohort issue is one we're all concerned about. We anticipate a 21% increase in the college system over the next four or five years, a tremendous issue for us. I think it would just begin the process. The Minister of Finance spoke to some college presidents yesterday and indicated that this was just the beginning.

**Mrs Bountrogianni:** He did? I'll have to get that in writing.

**Mr Patterson:** He did indicate that, so we'll see.

It's a huge problem for a college system that's 30 years old in some of our buildings.

**Mrs Bountrogianni:** For maintenance.

**Mr Patterson:** We understand there is a huge request out there that's not going to be met with the first round, and so we certainly need to see the government putting more money into SuperBuild.

**The Chair:** Thank you, Mr Patterson.

We will now recess for approximately 15 minutes.

*The committee recessed from 1252 to 1330.*

**The Chair:** We will now do clause-by-clause consideration of the bill. We'll call section 1 and ask if there are any comments, questions or amendments.

**Mr Kormos:** It's a very brief bill, and I don't intend to keep people here for a lengthy period of time. I'll speak to section 1 because in many respects this is the nub of it, if you will, or at least addresses it.

As I told the Legislature and as I mentioned during the course of these committee hearings today, I tried to analyze the brief debate. It was very brief. There was Mr Clement introducing the bill, responding to some questions; Mr Edighoffer, who I knew—he was the Speaker before he retired from the Legislature, and a very good Speaker; and Mr Renwick, who was very much a leading figure in the New Democratic Party.



There are two possible interpretations—and I referred to these earlier—of the motivation behind the amendment in 1974, perhaps three; one is just the overriding awareness across Canada of the loss of our economic independence because of foreign ownership. I would suggest that the amendment in 1974 wasn't directed at Americans, it was directed at any foreign ownership. Second was the possibility that collection agencies were thrown into the hopper along with other financial institutions such that there was that need to protect ownership of our financial institutions. Third—and I had to read it a couple of times—was the suggestion that when you had non-resident owners, it would be more difficult to regulate or control them by virtue of the regulatory regime vis-à-vis, in this case, collection agencies or any other number of government-regulated activities.

I acknowledge that in the course of 26 years the efforts to maintain an independent Canadian economy have not been overly successful. The reality of the free trade agreement and then NAFTA, whether we agreed with it or not—I didn't and I still don't, but that's not the point. The fact is that sufficient Canadians agreed with it in terms of how they voted to make it a reality.

During the course of the legislative debate in second reading everybody knew that it still required the corporation engaging in the activity to be an Ontario or Canadian corporation. It had to be incorporated in the province of Ontario or in Canada. I suppose, having said that, a company that had a public offering would be more difficult to identify as one in terms of who its owner is. If it has a public offering, the owners could be any number of people in any number of places, assuming it was widespread rather than just a small number of large shareholders.

I'm impressed, not necessarily positively, but I'm well aware of the fact that there has been no opposition to the proposition. Both Mr Bradley from the Liberal Party and I, when we spoke on the bill, were aware—and Mr Bradley referred to it—of concerns that were raised by the collection agencies' organization, the Ontario Society of Collection Agencies. We've been told today that that concern no longer exists. I can't dispute that. I haven't received any correspondence from that organization saying, "We withdraw any expression of concern," but at the same time they aren't here at the public hearings to express whatever concerns they may have.

That confirms what we were told by the presenters, Mr Weese and his group. I do have to tell you, Mr Weese was very co-operative during the course of his contact with me. I know he spoke with the other Niagara member from the opposition, with Jim Bradley for the Liberals. Mr Bradley and I, quite frankly, have discussed it as well. Is it the ideal world? Certainly not. You see, my problem is that I hear the concept being articulated about brain drain. I am increasingly convinced that what Canada suffers from, and Ontario, is not so much a brain drain as a profit drain. My concern about foreign ownership is that the—do jobs result? Of course they do. It's naive to suggest that they don't. What I'm concerned about is the profit drain, the fact that the profits, when you don't have

restrictions on foreign ownership, don't stay in Canada. That's, in my view, one of Canada's major problems. We're not just talking about investment capital. Investment capital can take many forms. It doesn't have to be equity. But clearly, when you have equity type of investment, that's when you have similar control over the profits. I am concerned about that.

I'm also concerned about the approach that's used here. Look, GE is GE. I know that one member made reference to this particular operation as small business, and I suppose in the total scheme of things it's still within the realm of small business because it anticipates, let's say, 250 employees. But let's not kid ourselves. GE is not small business. GE is big business. It's as big a business as you're going to find. I took a look at Murray Dobbin's book, *The Myth of the Good Corporate Citizen*, and its damning comments about GE—and they were damning. Again, I have the highest regard for Mr Weese. I don't attribute any of these shortcomings or negative qualities of GE in terms of how it conducts itself to Mr Weese or the current owners of the Fort Erie collection agency/call centre.

Let's understand. General Electric is rated the 55th-largest economy in the world, behind, I suppose, 54 countries, ahead of the Philippines, Iran, Venezuela, Pakistan, New Zealand, among others. GE's history in the United States, with respect to using its powerful economic clout to impact on governmental decision-making, is a frightening one—again, always self-serving. GE was, according to Dobbin in this book, at the forefront of dealing with campaigns for cuts to programs like social security; was at the forefront, by virtue of being a key funder, of the Committee on the Present Danger, which propagandized for the massive military buildup in the 1980s; was at the forefront of the Center for Economic Progress and Employment, which was, according to Dobbin, "a front group of industry giants determined to gut product liability laws," etc, etc, etc.

That's what corporations do; I understand that. I'm concerned, though, about the language that's perpetually used, and that is to say that we should acquiesce to this corporation's request so we can create jobs. I acknowledge that, based on everything we've heard, the major investment—and the capacity to invest even more, because GE has huge resources—will result in employment. But let's understand something. GE isn't doing this because it decided to embark on a job creation program, because it felt sorry for people in Niagara region, who have a higher level of unemployment than the rest of Ontario does or than Canada does, in terms of an average. GE's doing this to make money. That in itself is fine too; that's the nature of the beast. I understand that. I'm not so isolated that I don't understand that that's—quite frankly, if they weren't making money, there'd be hell to pay with any number of executives and shareholders. The bottom line isn't how many jobs you created today at GE; it's, how much profit did you make for your shareholders? That's not rocket science, as the Food Network chef says.



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George Soros, who is no left-winger, Mr Maves, no nko, but who is the capitalist's capitalist, one of the wealthiest men in the world and a highly regarded money lender—he's the king of the hill when it comes to international capitalists—in his book *The Crisis of Global Capitalism* very articulately points out that corporations don't exist, or have as their primary goal, to create jobs or to provide a better quality of life for huge chunks of the population; they exist to create profits. He says that in a non-judgmental way. I quote him because some people are liable to suspect me of having some sort of ideological motive when I attribute that quality to corporations. But that comment comes from George Soros. The book is readily available; it's still on the shelves.

What is a person like me doing reading George Soros? I find it peculiar where I get inspiration in this strange, new world. I read Dalton Camp for progressive analysis. I find him a remarkably enlightened person. I look to Dalton Camp for inspiration when it comes to attacking Ontario's Tories.

So here I am. I quote Camp, I quote Soros, rather than those more traditional left-wing thinkers whom people like Mr Maves might suspect me of being obsessed with. I sit in my garret reading old tomes from the 19th century or broadsheets by any number of revolutionary propagandists.

Mr Maves, it's George Soros and Dalton Camp who inspire me. It's not those old-fashioned ideologues.

**Mr Maves:** Camp doesn't inspire the rest of us.

**Mr Kormos:** Mr Maves knows that Camp doesn't inspire him. I have no doubt about that. Mr Camp's been a Conservative far longer than Mr Maves has, and has been around the block.

In any event, at the end of the day I suspect or interpret what I read in Hansard as the primary purpose behind the 1974 amendment as being the need for non-foreign ownership so as to facilitate regulation. The maintenance of the residency requirement comforts me somewhat in terms of its having to be an Ontario, Canada, corporation.

I'm impressed by Wayne Redekop, the mayor of Fort Erie. He's an outstanding municipal leader whose judgment I trust impeccably. He's demonstrated that in a number of areas recently here down in Niagara. I understand Niagara College's role in the development of call centres.

I am very familiar with the Canadian Tire Acceptance operation in Welland, which is a call centre, not a collection agency call centre.

I'm interested in and intrigued by GE's anticipation of government as being one of its sources of contracts, because that frightens me with respect to the fact that it indicates yet more contracting out of government services, which, as you well know, I don't advocate. I know there are people here who do. Fair enough. So be it.

First, I am just cautioning people that we've got to be very careful, because any number of things could create jobs, depending upon the type of argument you want to

make. There would be some investors who'd say: "You eliminate health and safety standards and we'll invest money in Ontario. That'll create jobs."

There might be some investors who would say, "You eliminate child labour laws in Ontario and we'll invest there; we can build Nike shoes in Ontario then instead of in the Third World countries where they build them," and the argument would be made, "Well, that creates jobs."

There might be investors who would say, "You get rid of"—I suppose they have gotten rid of all the environmental standards. Investors did say that. They said, "You reduce environmental standards and we'll invest in Ontario, because we don't want the red tape that prohibits us from spewing toxins into the air or into our water or about our communities."

I'm just saying we have to be very cautious. All of us want to see more jobs and higher levels of employment. Quite frankly, I hope that all of us want to see more better-quality jobs in terms of both the quality of the job and the wage. I appreciate what the presenters today said, in response to their acknowledgement that the base wage at this existing Fort Erie centre is \$10 an hour. I don't consider that a very satisfactory wage. "Entry level"—I don't know what that means. The fact is, you can't support a family on \$10 an hour. I don't think anybody here would propose that you can.

I was comforted by Mr Weese's position that he would not oppose incorporating the call centre employees into a workers' compensation scheme. I intend to at some point call him on that, take him for his word on that.

I was a little disappointed in the disinterest in the very specific question, "Is there a capacity in this industry to have base wages that are higher than \$10 an hour?" I regret being in a position where we, as a region, have to take jobs at any wage level because of the high levels of unemployment. That's what happens when you have high levels of unemployment: You put pressure on people to work for lower and lower wages. That's the nature of the beast. It's one of the phenomena.

Now, am I going to be a conspiracy theorist and suggest that somebody is out there creating high levels of unemployment so that people have to work for less and less? Read Linda McQuaig in *The Cult of Impotence* and her analysis of it and you might understand why that's not some wacko theory. In fact, it has been a practice of the United States and Canada, maybe not with the sole purpose but certainly the net effect. So I'm disappointed that we are in a position, because of our high levels of unemployment, to applaud low-wage jobs, but I will nonetheless agree that there are going to be people to take those jobs, no two ways about it.

Niagara College has certainly been active in terms of training and working with the industry. Canadian Tire Acceptance, which I'm very familiar with—I've been in their operation many times—is a good corporate citizen, as Mr Redekop indicated the Fort Erie operation is. Canadian Tire Acceptance is a good corporate citizen. It's active in the community. It works hard, I'm con-



vinced, to develop ergonomics within the workplace to try to reduce the levels of workplace injury.

But at the same time, I hope some of you folks who haven't been to call centres go to some of them, because those folks work hard. They are under incredible pressure. The computerization of them, as I indicated earlier today, guarantees that no single staff person who's working the phones is idle for more than X period of time, because it routes the calls as they come in and spreads them out around the workplace. It's an incredibly high-pressure job, very demanding, and clearly is not an entry-level job when you consider that Niagara College considers it sufficiently important to have specific training programs for it because of the complexity of the computer work and the actual interaction with people. If it's an entry-level job, what is Niagara College doing providing specific programs training people for it? I suggest that that's a little bit of a contradiction.

I sincerely hope that I am not in error when I take GE at their word—and I do—that there will be the creation of these new jobs, a total complement of 250. I sincerely hope that this is not a tactic designed to simply move this operation into other jurisdictions, in other words, to take the business that it has accumulated—because that's a phenomenon of call centres. The insurance industry, I understand, has call centres from as far away as the Caribbean where, when you're talking to an insurance agent for any number of purposes on a phone, you're talking to some call centre in the Caribbean. I understand that phenomenon.

So I sincerely hope that we haven't been misled. At the same time, I hope that this does not, by virtue of being a GE entry point in the collection agencies business here in Ontario, impact in a negative way on those made-in-Ontario, based-in-Ontario, invested-in-by-Ontarians operations that are currently some of the similar types of call centres and/or collection agencies.

I have to acknowledge the lack of opposition to this. I think I've done a fair amount of work in trying to analyze the rationale for the original 74 amendments. But I also have to ask committee members to be cautious in the jobs-at-any-cost argument. I'm not suggesting this is a worst-case scenario. I'm not suggesting GE is asking us to eliminate child labour laws or reduce minimum wages. Oh no, they probably wouldn't mind at the end of the day, but I'm not suggesting they're asking anybody to do that, by any stretch of the imagination. But I just caution you people to be very careful about the types of leveraging of this very, and rightly so, passionate effort on every Ontarian to reduce unemployment; be cautious about the sort of leveraging that can be used in the course of that context. Thank you very much.

1350

**The Chair:** Do we have any further comments on section 1? If there aren't any further comments, questions or amendments, I'll now put the question. Shall the motion carry? Section 1 is carried.

Do we have any comments, questions or amendments on section 2? Then I will now put the question. Shall the motion carry on section 2? Carried.

Are there any comments, questions or amendments on section 3?

**Mr Levac:** It's more clarification for myself. It says that resident ownership requirements for individuals who carry on the business of collection agencies are being repealed. Does that mean that if a person comes from any other country or any other jurisdiction outside Ontario, they at one time had some type of restriction on them? Can anyone help on that?

**The Chair:** Can we have a technical response to the question.

**Mr O'Toole:** As PA, I'll attempt without the legal background. There were in the previous bill. That's the single most important part of Bill 37: to remove that restriction on foreign ownership.

**Mr Levac:** So that applied as well to individuals, that's what I'm reading into this, or is it more that it's resident ownership, meaning the company itself, per se? I'm just wondering if there's a difference between—

**Mr O'Toole:** Individual and company, you mean?

**Mr Levac:** Correct.

**Mr O'Toole:** I can't specifically answer that. Is legal counsel here?

**Mr Michael Wood:** I think I might be able to provide some information on the question. Section 3 of the amending bill is designed to repeal section 10 of the act as it now stands. You'll see in the materials that section 10 of the act as it presently reads imposes some restrictions on individuals who carry on business in Ontario as a collection agency. It's limited to individuals. Section 11 of the present act deals with corporations that carry on business in Ontario as a collection agency.

**Mr Levac:** So, in terms of what the answer to my question is, now that this is being repealed, an individual representing the company does not have to be an Ontario resident.

**Mr Wood:** For a legal opinion, I would refer you to legal counsel to the Ministry of Consumer and Commercial Relations that administers the act, but yes, it is my understanding that as a result of repealing section 10 there is no longer any residency restriction on an individual who carries on business in Ontario as a collection agency. With respect to any restrictions on corporations, they are dealt with in section 11 of the act presently, and in the amending bill, section 4 of the amending bill sets out a new version for section 11 of the act.

**The Chair:** Mr Straus, did you wish to add to that?

**Mr Earle H. Straus:** Earle Straus, legal services branch for the Ministry of Consumer and Commercial Relations. The purpose of section 3 is to eliminate residency requirements for individuals who are registered to carry on the business of collection agencies, as opposed to employees of collection agencies who are collectors. The act currently requires registration both for collection agencies and collectors. Collectors work for collection agencies. A collection agency can be owned by an individual person or by a corporation. The residency requirement for both the individual person-owner and the corporate person-owner is proposed to be eliminated.



**Mr Levac:** It speaks a little bit to what Mr Kormos was making reference to, and that is the regulatory authority the province would have on such individuals. Do they apply?

**Mr Straus:** The current requirement for the registration of an individual who wishes to be registered to carry on a collection agency business is provided for both in the act and in the regulations. Therefore, the elimination of those requirements for registration purposes would be within the authority of the Legislature.

**Mr Levac:** That's enough of a clarification. I just want to ensure that there is a regulatory section of the act that still allows for, shall I say, checking up on a non-resident person. Is there such an animal?

**Mr Straus:** The checking up would still apply to individuals who carry on the business of collection agencies, because they will still have to be registered, but they will not have to be resident.

**Mr Levac:** I guess maybe that's the nub of it. Being a non-resident does not matter, whether the regulations apply to that individual.

**Mr Straus:** Precisely. The distinction is between ownership, for which residency is not required, and the conduct of the business, the operations, which is not affected by the proposed amendments.

**Mr Levac:** That probably opens up a couple more questions, but I'll defer, Chair.

**Mr Kormos:** Let's be perfectly clear here, because this whole issue of capacity to regulate implies that provincial legislation will be applicable to the person whom one is seeking to regulate. Is that fair?

**Mr Straus:** Yes.

**Mr Kormos:** Let's just deal with out-of-province collection agencies, because some collection agencies are real scoundrels. They harass people. They are horrid operations. I don't know if you're familiar with any of those kinds of collection agencies.

**Mr Straus:** Not personally, fortunately.

**Mr Kormos:** But you've heard of them. How do you control the collection agency that's committing a quasi-crime, a violation in Ontario, when they're not resident in Ontario?

**Mr Straus:** The offices from which the business is carried on have to be located in Ontario. Books and records have to be located in Ontario. Collectors, who have to be registered, are resident in Ontario. Trust funds, into which payments are made, have to be located in Ontario. The regulation of a business as an operation as opposed to the ownership of the business is the distinction we're making.

**Mr Kormos:** That's helpful. That's important.

**The Chair:** Thank you, Mr Straus.

Any further comments or questions on section 3? Then I'll put the question. Shall section 3 carry? Carried.

Section 4: Any comments, questions or amendments? Then I'll put the question. Shall section 4 carry? Carried.

Section 5: Are there any comments, questions or amendments? Then I shall put the question. Shall section 5 carry? Carried.

Section 6: Any comments, questions or amendments? Then I shall put the question. Shall section 6 carry? Carried.

Section 7: The short title of the bill—you wish to speak, Mr Kormos?

**Mr Kormos:** Thank you, Chair. Obviously we're close to the end here. I want to speak very briefly to the business of regulation. I may speak for all of the 20 minutes I'm allowed or I might only speak for 10 or 15 minutes.

1400

You will recall, Mr Maves, that yesterday when the pre-budget committee sat here, one of the groups that attended were representatives of the Canadian Co-operative Association. What has happened over the recent past is that they have been put into a quasi-self-regulatory regime by virtue of rather than the Ministry of Consumer and Commercial Relations regulating them, it was an arm's-length body with yet another acronym, FSCO, the Financial Services Commission of Ontario. The FSCO's job was to regulate co-operatives, which are special beasts but not totally dissimilar from other business corporations. What they came to the committee with—and again there was no contradiction of what they told us—is that because regulation had been transferred over to this arm's-length body which was to be self-sustaining, self-sufficient, the co-operatives—I appreciate we're talking about not just non-profit but also for-profit co-operatives. Gay Lea Foods was one of the examples.

Another one was the pork producers' co-operative, and I loved their name because it was called Progressive Pork Producers. I thought was really neat, that it was both a co-operative and Progressive Pork Producers. I told them, "To heck with Maple Leaf and all those others; I'm buying Progressive from now on." It's a co-operative of pig producers who are trying to protect themselves from the wackiness of the market.

What's happened is that because of this new arm's-length regulatory body—the current incorporation fees for a co-op are \$285 under the Ministry of Consumer and Commercial Relations. The current business corporation fees for a business corporation—you know, ABC Co Ltd—are \$330. But the FSCO, this new regulator, proposes to raise the incorporation fees to \$1,000, because what's happened is that it's got to be self-sufficient. This is a much smaller group of players, yet you have effectively the same overriding level of bureaucracy to administer them. It's not a very cost-efficient way to do things.

So I know Mr Maves will take this back. He and Ernie Eves are going to be having several conversations about Niagara College, about so many other things. So Mr Maves will be taking this back. But it was pretty shocking, I think for all of us, to have this and similar atrocious increases in fees that take them off a similar playing field from business corporations per se, even though they share many of the same qualities. That's just one observation.



And I'm addressing here again the business of self-regulation or arm's-length regulation as compared to Ministry of Consumer and Commercial Relations regulation. I know that the ministry, and it's not just in the last year or two years, has been talking about all these self-regulatory schemes. I think it's very dangerous to move away from the ministry's regulation.

Let's talk about collection agencies. The impression we got from GE today is that this expanded company is going to be dealing on a pretty sophisticated level of collections, but I'm assuming that they could similarly take on the little consumer debt collections. Some of the tactics that are out there include the dunning letters with no return address and only voice mail telephone calls.

You know some of the practices: the practice of so-called collectors using phony names, all of the ruses about the threats. I've had people come in showing me stuff that looks like Small Claims Court documents coming from collection agencies, people who think they've had judgment obtained against them because of the similarity between that document and a Small Claims Court judgment, the sort of thing the sheriff serves on you. Some of the tactics are really deplorable. Some of the very aggressive telephone harassment tactics—harassing people at workplaces, harassing spouses, children, neighbours, the whole nine yards—are really repugnant.

So just in the general realm of collection agencies, this is not the most attractive facet of any financial institution's business, right? This is way down the food chain, if you will—well, it is. These are not high-class operations; they're chasing bad debts. That's what they're doing. And when you have incentive programs, which we heard of from the submitters this morning, that motivates individuals to do everything within their power to get that money, because they get paid on how much money they actually collect.

I'm simply saying that as we close off the hearings on this bill, being mere amendments, I would ask that government members remain very conscious of the need for tough regulation of collection agencies in general in terms of the tactics they use, in terms of protecting people from abusive tactics, in terms of ensuring that what they do is within the confines of reasonable legislation.

I don't believe you can entrust that to the industry itself, because most of our experiences of self-regulation—as a matter of fact, Ian Scott, who was a brilliant Attorney General, wrote an article in one of the University of Toronto law journals. He was very disappointed one day when I confronted him with it during question period—not that he had forgotten he had written it; he just wasn't sure I'd be able to find it—because he was advocating, among other things, not quite self-regulation but something akin to it. I referred to an article by one Ian Scott, QC, wherein the theme of the article was that regulatory bodies tend to be co-opted by the regulated. That was his essential theme.

Take things like the Ontario Insurance Commission. Who ends up working for the Ontario Insurance Commission? Usually people with backgrounds in insurance.

Who has the greatest deal of influence but the insurance industry itself? So I'm very sceptical about that. I enjoyed Mr Scott's University of Toronto law journal article, his essay on the issue, because I thought it was a very valuable insight into the whole business of this basic principle that regulatory bodies are most inevitably co-opted by the institutions that they purport to regulate.

So I think the government should be active in the regulation of collection agencies. I'm suggesting that the collection agencies' practices range from very good to downright seedy and deplorable; the sort of people who should be put in jail for the sort of stuff they do. I hope they're in the minority, but I want a regulatory scheme—and I hope other people share this view—that is independent of the industry and, quite frankly, one that's performed by the government, performing one of the those governmental roles that it can't abandon or abdicate.

**Mr Levac:** Just a couple of quick comments and I'll wrap up. I won't need to go into great detail. I think some of what Mr Kormos is saying needs to be heard, and very clearly; maybe not acted on but at least considered when making some of the decisions based on this change in the law.

I would also say to this government and to future governments that when these bills get changed there should be a review process and an opportunity for people to make comment on the change and what valid things have happened as a result of it, the things that have happened in a positive way but also the things that have not gone the way the change was intended to go; to be honest and open about that and be able to make other changes down the road that would probably plug the holes that become evident.

On the concept of self-regulation, though, I differ from Mr Kormos in that I believe there is a role for both parties to be involved. I would advocate that the good companies, the good call centres and the good collection agencies that are out there, would want some type of self-regulation to ensure that the bottom end, shall I say—as Mr Kormos has indicated, there is a bottom end to this—probably festers and kills itself because of the good practices of those companies that are performing better; and that the government does play a role in providing regulation in that they work co-operatively with not only the companies but the communities that indeed are going to have these companies in their areas and would want to have a reputation as a good corporate citizen. I don't necessarily mean good corporate citizen by the number of dollars they donate to the charities in the community but how well they treat their employees. If the employees are treated well, they'll do their job well and they'll treat their community well.

There's a combination there of the types of things that are necessary to happen, and it takes a vigilant government not to acquiesce its responsibility and simply say, "We're not in that business," but to say, "We are going to be a part of the solution, to ensure that all the communities are best served by these types of agencies." I would



suggest very respectfully that that's of all companies and corporations, because we've heard comments about the size and scope of GE and we've also heard comments about the smaller organizations that are out there.

I see a possibility of a combination of this government's vigilance when they make these changes, to ensure that they follow up on study, to ensure that it is a good change, that it is beneficial for the community.

I do not question for one minute that we are going to see some improvement in the job situation, but I too would echo a concern that simply says, "At what price do we just run in and start taking the types of jobs that are out there to take advantage of people's situation in an unemployment setting?" I'm very concerned that we start hitting minimum wage jobs that basically create working poor. I think we should be very cautious of allowing that to be the mainstay of job creation.

**The Chair:** Are there any further comments?

**Mr O'Toole:** Just in summary on section 6, which we're addressing, I appreciate the input from other mem-

bers. I can assure them from my understanding that the collection agencies operating in Ontario must be licensed here, and the same regulatory standards apply with respect to the practices of the business. So there are no changes there. But I think it's important to caution those who do write the new regulations that I agree with much of the sentiment that's been said, that we don't want any practices that are not appropriate business standards. That's well understood.

**The Chair:** Any further comments? If there are no further comments, questions or amendments, I will now put the question.

Shall section 7, the short title of the bill, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 37 carry? Carried.

Shall Bill 37 be reported to the House? Agreed.

Do I have a motion to adjourn? This meeting is adjourned.

*The committee adjourned at 1412.*

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### STANDING COMMITTEE ON GENERAL GOVERNMENT

#### Chair / Présidente

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

#### Vice-Chair / Vice-Présidente

Mrs Julia Munro (York North / -Nord PC)

Mr Toby Barrett (Norfolk PC)

Mrs Marie Bountrogianni (Hamilton Mountain L)

Mr Ted Chudleigh (Halton PC)

Mr Garfield Dunlop (Simcoe North / -Nord PC)

Mr Dave Levac (Brant L)

Mr Rosario Marchese (Trinity-Spadina ND)

Mrs Julia Munro (York North / -Nord PC)

Ms Marilyn Mushinski (Scarborough Centre / -Centre PC)

#### Substitutions / Membres remplaçants

Mr Peter Kormos (Niagara Centre / -Centre ND)

Mr Bart Maves (Niagara Falls PC)

Mr John O'Toole (Durham PC)

#### Also taking part / Autres participants et participantes

Mr Earle H. Straus, legal counsel,

Ministry of Consumer and Commercial Relations

#### Clerk / Greffier

Mr Viktor Kaczkowski

#### Staff / Personnel

Mr Andrew McNaught, research officer,

Research and Information Services

Mr Michael Wood, legislative counsel



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## Standing committee on General government

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1st session, 37th Parliament | 1<sup>re</sup> session, 37<sup>e</sup> législature

Issue G-6

Mon 10 Apr 2000 / Lun 10 avr 2000

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Monday 10 April 2000

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#### **Vice-Chair / Vice-Présidente**

Mrs Julia Munro (York North / -Nord PC)

Mr Toby Barrett (Norfolk PC)

Mrs Marie Bountrogianni (Hamilton Mountain L)

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Mr Rosario Marchese (Trinity-Spadina ND)

Mrs Julia Munro (York North / -Nord PC)

#### **Substitutions / Membres remplaçants**

Mr Ted Arnott (Waterloo-Wellington PC)

#### **Clerk / Greffier**

Mr Viktor Kaczkowski

#### **Staff / Personnel**

Mr Jerry Richmond, research officer, Research and Information Services

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*The committee met at 1535 in committee room 1.*

### ELECTION OF CHAIR

**Clerk of the Committee (Mr Viktor Kaczkowski):** Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

**Mr Ted Arnott (Waterloo-Wellington):** I would like to move Mr Gilchrist as Chair.





**Clerk of the Committee:** Are there any further nominations? There being no further nominations, I declare nominations closed and Mr Gilchrist duly elected Chair of the committee.

#### APPOINTMENT OF SUBCOMMITTEE

**The Chair (Mr Steve Gilchrist):** The first order of business: Is there a mover for the motion to appoint a business subcommittee?

**Mr Dave Levac (Brant):** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: Mr Gilchrist as Chair, Mr Chudleigh, Mr Levac, and Mr Marchese; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

Do you like how I wrote that?

**The Chair:** Thank you, Mr Levac. Is there any discussion on that motion? Seeing none, I'll put the question. All those in favour? Opposed? The motion carries.

Mr Arnott?

**Mr Arnott:** Mr Chair, I have a motion I wish to table. I move that, pursuant to standing order 124 and the order of the House dated April 6, 2000, the committee consider the establishment of an association of former parliamentarians.

**The Chair:** It's my understanding, Mr Arnott, that you're just tabling that motion. We won't be holding a vote on that or any discussions until Wednesday, to allow us the 24-hour notice period.

I would like to ask the committee, if it meets their approval--all three parties--to reconvene on Wednesday for the purpose of discussing that motion and such other business as the committee may have. Seeing general agreement, the clerk will please make the appropriate arrangements.

**Mr Levac:** Mr Chair, I would like to point out that I'll probably be needing a substitute, but I'll make sure that gets proper notice.

**The Chair:** If that's the case, Mr Levac, the second thing I wanted to do was ask if the subcommittee members would be prepared to have a quick meeting right after we adjourn the formal committee meeting in order to set up the structure for Wednesday's debate and subsequent weeks.

**Mr Rosario Marchese (Trinity-Spadina):** Structure for the debate?

**The Chair:** Just confirmation that you would be able to participate Wednesday and the following week.

**Mr Marchese:** I'll be there.

**The Chair:** OK, so there will be a subcommittee meeting immediately following the adjournment.

Is there any other business to be brought before the committee at this point? Seeing none, would someone like to move adjournment?

**Mr Ted Chudleigh (Halton):** I move adjournment.

**The Chair:** No discussion? The committee stands adjourned until Wednesday at 3:30.

*The committee adjourned at 1539.*







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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 12 April 2000

# Journal des débats (Hansard)

Mercredi 12 avril 2000

**Standing committee on  
general government**

Association of Former  
Parliamentarians

Subcommittee report

**Comité permanent des  
affaires gouvernementales**

Association d'ex-parlementaires

Rapport du sous-comité



Chair: Steve Gilchrist  
Clerk: Viktor Kaczkowski

Président : Steve Gilchrist  
Greffier : Viktor Kaczkowski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 12 April 2000

Mercredi 12 avril 2000

*The committee met at 1536 in committee room 1.*ASSOCIATION OF FORMER  
PARLIAMENTARIANS

**The Chair (Mr Steve Gilchrist):** I call the committee to order in this history-making session. I welcome not only the sitting members but our august and esteemed colleagues from the last Parliament who have joined us here today.

The first order of business will be to formally receive a motion. Mr Barrett, you were planning on making that motion?

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** Yes, I could do that, Mr Chairman. By way of explanation, this motion was put forward previously by MPP Ted Arnott, who was subbing in at that meeting, so I will be pleased to make the motion.

I move that pursuant to standing order 124 and the order of the House dated April 6, 2000, the committee consider the establishment of an Association of Former Parliamentarians.

**The Chair:** We'll have debate on that motion now. To that end, I'm in the committee's hands. I guess we could do one of two things: We could either invite comments by the members of the committee, or we have had an offer made to us by the working group representing all three parties that has been working on this issue behind the scenes. I would invite a response.

**Mr Ted Chudleigh (Halton):** I would suggest that we hear from those who have been working on it for a while and get a sense of what they're thinking and how they feel before we go to the trouble of expanding our own thoughts on it, not having had the experience they have.

**The Chair:** The clerk has just advised me of something. At this stage, we have to speak to and vote on the actual motion to consider. So we're not creating anything at this stage, but apparently, pursuant to standing order 124, we're here in order to invite the debate. My apologies for that.

**Mr Dave Levac (Brant):** I have just a question of clarification regarding the name, the Association of Former Parliamentarians. Would it be provincial parliamentarians, or does that necessarily have to be done? It's just a question of clarification to anyone who has that information.

**The Chair:** At this stage, if we accept this motion, then everything including the title would be up.

**Mr Levac:** Has to be discussed.

**The Chair:** Yes. The next order of business should be the adoption, once we've looked at that. Is there any further discussion on the motion itself? All those in favour? Contrary, if any? The motion carries.

## SUBCOMMITTEE REPORT

**The Chair:** Immediately after the most recent meeting of the committee, we convened a subcommittee. I believe, Mr Chudleigh, you have a copy of that report.

**Mr Chudleigh:** Yes.

**The Chair:** Would you like to read it into the record?

**Mr Chudleigh:** Report of the subcommittee:

Your subcommittee met on Monday, April 10, 2000, to consider the future business of the committee, and has agreed to recommend:

1. That, at its meeting of Wednesday, April 12, 2000, the committee consider the order of the House dated April 6, 2000, which states "that, for the purposes of standing order 124, the standing committee on general government be authorized to consider the matter of the creation of an 'Association of Former Parliamentarians.'"

2. That, should the committee adopt the proposal to study the above-noted matter, the committee be tentatively scheduled to meet on Monday, April 17, and Wednesday April 19, 2000, for this purpose.

3. That, upon completion of the above-noted matter, the committee commence its consideration of Bill 28, An Act to proclaim German Pioneers Day, at its next regularly scheduled meeting.

4. That the deadline for the receipt by the clerk of the committee of any proposed amendments to Bill 28 be 5 pm, Wednesday, April 19, 2000.

That completes the report, and I'd be pleased to move it.

**The Chair:** Any discussion on the subcommittee report?

All those in favour of its adoption? Contrary? The report is adopted.

Now, with that business out of the way, I invite comments from either of the two parties if you are at odds with Mr Chudleigh's earlier comments about inviting the group first.

**Mr Levac:** No, invite them.

**The Chair:** Well, Mr Parker or whoever is the designated—

**Mr John Parker:** We'll go with Derwyn.

**The Chair:** We'll go with the august Reverend Shea. Welcome. Reverend Derwyn Shea, Mr Gilles Morin, Mr Terence Young and Mr John Parker, for the record, are joining us for the purpose of discussing this proposal. The floor is yours, Reverend.

**Rev Derwyn Shea:** I welcome the opportunity to address the committee today, and I note the appropriateness of the committee implementing one of the rule changes that allows it to assume legislative initiative on behalf of the House. How appropriate that this should be the bill that is addressed through the rule change, for we hope it will result in all-party support for the establishment of the Ontario Association of Former Parliamentarians.

For those who might be under the impression that what we are requesting today is without precedent or is being proposed only for the advantage of former parliamentarians, let me set the record straight. Such associations exist and have operated for some years in other Canadian provinces, and approximately six years ago, by an act of the federal Parliament, the Canadian Association of Former Parliamentarians was established. Nor is what we are requesting uniquely Canadian. An Association of Former Members of Congress exists in the United States, and there are a number of state associations. A number of parliamentary democracies have established or support associations of one sort or another that are dedicated to the non-partisan and continued association of former members, to the benefit of both Parliament and their broader constituency.

There is ample precedent for the establishment of the association and for enabling legislation to be approved by this Parliament. There's no question but that the association could be established through the usual course of commercial incorporation. But we believe the association should be the creature of our provincial Parliament and that its purpose and protocols should be approved, not only by those currently qualified for membership, but should receive public consideration from the men and women who one day will themselves be qualified to join.

With regard to our goals and objectives, may I offer the following. First, the association must be non-partisan. Membership will consist of men and women who served in the Legislative Assembly of Ontario, who carried party colours, loyalties and ideology throughout their active political life but upon ending their legislative service are now able to bring their individual and collective experience and wisdom to the service and benefit of this Parliament and the office of the Speaker rather than party caucus. The association must have no place in the day-to-day legislative process, nor should it ever be aligned with any caucus to the exclusion of any other.

We contemplate a role for the association that involves education initiatives to foster and advance the knowledge of Ontarians about our Parliament, its history, traditions

and procedures, subject to and in concert with the office of the Speaker;

To host visiting delegations of former parliamentarians from other provinces and states; develop a non-partisan speakers' bureau; fundraise for scholarships in political science, public administration or programs that might be developed for former pages of the House; fundraise for legislative precinct projects where requested and approved by the Speaker and the Board of Internal Economy;

To institute and provide for an annual memorial service to acknowledge the death of former members and to remember their contribution to Ontario and parliamentary democracy;

To offer advice and support to members who exit the Legislature and to provide a coordinating service on behalf of all caucuses in monitoring the whereabouts and well-being of all former members; to communicate on a regular basis with the association membership and serving members and to establish effective liaison with each caucus office and the office of the Speaker.

Mr Chairman, I began this enterprise four years ago or more, as my colleague Mr Morin reminds me, after viewing a program that was broadcast on CBC-TV *Man Alive*, titled *The Invisible Tattoo*. The spectre of Hans Daigeler was daunting, as were the experiences of so many former federal and provincial members of Parliament who were attempting to reinsert themselves into their careers, often with great difficulty. At the very least, some modest program of assistance seemed in order.

As I discussed this with serving and former members, a proactive, positive and enhanced model began to emerge. Everyone who serves in this place, regardless of political persuasion, has the best interests of Ontario and its people at heart. Every member has stepped forward voluntarily to serve, in most cases believing truly that they appreciate what is expected of them and the price they are expected to pay in terms of their personal and professional life. But I also discovered that what too often is overlooked, discounted out of hand, ignored or remains unspoken is the cost that is never paid until one leaves office and, in many cases, it is a cost that is borne by family as well as members. It is a cost that is often unknown, ignored or deliberately minimized by candidates when they first seek election, or by their enthusiastic supporters. Perhaps that's inevitable or perhaps that's the only way our parliamentary system can continue to attract aspiring members.

What has become clear to me is that when men and women leave this place, they carry extraordinary experience and insight with them. When they leave this place, they leave the immediate circle of decision-making, and under no circumstance should they attempt or even contemplate circumventing it or intervening in it. But at the same time, their experience and talent ought not to be lost. Freed from traditional constraints, they have much to offer the institution of Parliament and parliamentary democracy. Freed from partisan restraint, there are any



number of initiatives former members might be engaged in, in co-operative fashion to the benefit of Parliament.

I'm joined today by several former colleagues who, along with me, have served in this House. We represent all three parties.

Tony Silipo, former member of the NDP caucus, is presently out of the country and sends his regret at missing today's meeting but supports this initiative completely. Gilles Morin, former member of the Liberal caucus and distinguished Deputy Speaker of the House, joins us today to offer his supporting intervention, and I am joined by two former members of the Progressive Conservative caucus, Mr John Parker and Mr Terence Young. Our collaboration and presence attest to the commitment we share and the non-partisan nature of the proposed association.

1550

Finally, Mr Chairman, I wish to advise the committee that we have surveyed every former member of this provincial Parliament whom we were able to identify and locate. Not all caucuses have kept accurate lists, but most former members were contacted. We received replies from more than 60%, and all but one strongly and enthusiastically supported this initiative. Several declined any leadership role in the association because of ill health or advanced years, but even in those instances support for the founding of the Ontario Association of Former Parliamentarians was unqualified and without reservation.

I wish to make very clear, as I conclude my remarks, that the association membership will be subject to annual dues, and it is from that source that most of the association's costs will be drawn. All we will request is modest space and furnishings within the precinct so that we may be available to the Speaker and caucus offices, and accessible to former members. In this regard, we hope to adopt many of the operating procedures that have been developed by the Canadian Association of Former Parliamentarians. With these introductory comments on the record, I now ask you to recognize Mr Gilles Morin, who will add further to our submission.

**The Chair:** Welcome back, Mr Morin.

**Mr Gilles Morin:** I want to tell you how happy I am to be here today. I spent 14 years here, so I became very attached. It would be difficult to say that I did not keep good memories. They were all excellent memories. But I have one particular sad memory that I want to recount to you, and hence the reason we're here before you.

It was in November 1995, a Friday afternoon, and I was at home. I received a call from Dalton McGuinty telling me that my seatmate, my colleague Hans Daigeler, had died. Hans was only about 52 years of age, I believe. My first reaction was, "Was it a heart attack?" Of course when it was explained to me what a tragic death Hans went through, it was a real blow. I felt guilty. He was my seatmate. How come I didn't see that? You know yourself that when you sit beside a companion for a long time, you become friends. It's like a neighbour at home. You know their concerns, you understand their

worries, you understand their happiness, you talk about your families.

Hans was really a great loss—a doctor of theology. Why would he go through that? How come I didn't see that? Of course, he had been away from politics for two or three months. The first thing we think is: "What about his wife? What about his children? What have they got? Have they got protection of some sort?" We found out that the insurance coverage was gone. She was left with nothing—nothing at all. Nobody to talk to. That can happen to any of us.

So we made some inquiries. How could we form an association so that at least someone who is affected by that type of tragedy has someone to talk to? I spoke to Derwyn. Of course, Derwyn's background lent itself to this so well. I made some inquiries, and I must say that it's thanks to the tenacity of Derwyn that we're before you today. Derwyn, thank you very much from all of us. It was great.

When I left politics, I wasn't defeated. I left it because I'd had enough—14 years. But I have met some who have lost, and they took it personally. You should never take a defeat personally. You've been asked to serve your province, like a soldier, to serve well, to give your time. Not many people understand politicians as well as politicians. There aren't that many people who understand the sacrifice you have to make, the time you have to spend, the discussions you have to participate in and the frustration you constantly have to face on things. I know that fundamentally we're all the same. We work for one goal: to help our constituents, whoever they are. Helping transcends politics, and that is what we should all be about.

That is what this association is all about. It's to help each other, because some day you will face a problem. Where do you go? Who can you share your grief with? Who can you share your happiness with? How can you help that individual find a job, perhaps? Once you've been in politics, you are stigmatized. You're stigmatized for the rest of your life, want it or not. You serve your community well, but people forget that. You're in today, and people know you. Three or four days afterwards, you're forgotten. I know it too well. But at least you have the satisfaction of having been chosen, in a democracy which is the envy of the world, to serve your country, to serve your community. Then an election comes, and you may be nicest person in the world but you're kicked out. But never take it personally. In my 14 years, I haven't met any members from any party who intentionally wanted to do harm to this province; I never did meet anyone. I met many people making mistakes. We all make mistakes, terrible mistakes—but as long as we admit that we make mistakes, and I think we all do.

The association transcends politics. It's to help each other, to be able to communicate and to have someone you can go to and say: "Derwyn, I need your help. Gilles, I need your help. Can you advise me?" I was in the army for 14 years. I have army friends from the 1950s. They'll be my buddies for the rest of my life. In politics it's the same, because we're a team together. Even though we



don't share the same philosophy in politics, we share the same responsibility. That is the purpose of the association. It transcends politics. It has nothing to do with politics. It's a question of helping each other because we understand each other.

Derwyn, thank you. Really, I'm surprised, because we were discouraged two or three months ago: Where would it go? We had some negative reaction but there was no enthusiasm. So I hope that you have enthusiasm to introduce that bill as soon as possible in the House, because you're working for you, you're working for us and you're working also to make a better society. Also, it's going to be more and more difficult to go and get candidates to go into politics. Why is that? Because of the problems you have to go through, the criticism you go through. Not everyone is willing to accept those criticisms. You make a good decision, you displease others.

So we must preach—and the word is right, to preach—that it is the responsibility of every Canadian to give part of their life, part of their time to their community, to go and serve as a member of Parliament. There is, in my opinion, no greater honour than to represent your constituents.

On that, I leave you, and please make sure that it passes quickly because it's for the benefit of us all.

**The Chair:** Thank you, Mr Morin. Do either of our other colleagues wish to add anything?

**Mr Terence Young:** I will try not to repeat what was said by my colleagues. If you see fit to present this bill to the House, I think it would be a very marvellous and fitting way to show respect and to honour former members who, in most cases, have made a lot of sacrifice, their families have made a lot of sacrifice, and offer them a status which is not a political status but an honorary status and say to them: "You're still needed. You can still play a role. It may be a ceremonial role, it may be an educational role, but you're still valued in this place." It would mean a lot to the former members, and I think it would do a lot for this institution as well.

**Mr Parker:** Batting cleanup, as it were, maybe it falls to me to summarize somewhat and maybe presume to recommend a few steps forward from here.

Before I do that, however, let me take this occasion to thank you, the members of this committee, for first agreeing to proceed with the matter and, in particular, for moving so promptly to advance discussion of this issue. We are very pleased with the co-operation we've already received from all of the sitting members of the House in moving this concept forward. I should in that context also express the appreciation of the working group for the co-operation we have received from the House leaders of all three parties.

We met with all three House leaders and I can tell you that we were very impressed, very pleased with the sincere expressions of support that we received from the House leaders and the words of encouragement that we received. That is all borne out by the fact that the matter was brought before the Legislature in the first week of reconvening this month after the interval from last fall. It

was brought immediately to this committee. As I say, we're very pleased with the speed with which this committee has chosen to act on the matter.

1600

I should also, and I will, thank the members of the working group for the work they have done: Derwyn Shea, Terence Young, Gilles Morin and Tony Silipo, representing all three parties. I'm proud to have been part of that working group myself. I should express particular gratitude to Derwyn. We tended to meet over lunch or breakfast most of the time and it was Derwyn who always picked up the tab. For most of our meetings, it was Derwyn who was the only one among us who was employed. We probably would've stiffed him for the bill anyway. Derwyn has helped this cause in more ways than might appear on the surface.

Let me also express the gratitude of the working group to Barry Turner and Elizabeth Matte of the Canadian Association of Former Parliamentarians based in Ottawa. As Derwyn mentioned in his leading remarks, the proposal that is before you today is not without precedent. There is precedent federally in this country and in at least one other province. British Columbia has such a group as the one we are contemplating, as well as other jurisdictions elsewhere in the world.

Our research didn't take us to all of those jurisdictions, but it did take us to Ottawa. We were hosted most graciously by Barry Turner, who is currently the chairman of the Canadian Association of Former Parliamentarians, and Elizabeth Matte, who serves most effectively in a staff position with that body. We learned a lot during our visit with them.

The fruits of that visit are reflected in the documents before you this afternoon. I distributed two items to each of you: a draft bill that I'm about to urge to your consideration, and also a one-page brochure. The one-page brochure is a straight Xerox copy of the brochure that the Canadian Association of Former Parliamentarians has produced as a bit of a synopsis, a bit of a description of who they are and what they are about. That provides the look and feel, if you will, of the type of association that the working group contemplates and brings before you for consideration this afternoon.

The draft bill you are looking at is modelled after the federal bill forming the Canadian Association of Former Parliamentarians. We've adapted it to pertain to the Ontario context, but the general structure and format of the bill and the nature of the organization reflected in that bill are taken quite directly from the existing federal legislation.

You have already heard as to the motives behind the proposed association and some of the elements we hope will characterize the association. Maybe I might summarize some of those comments.

First, let me be clear as to what is not proposed before you this afternoon. Nothing in the recommendations before you this afternoon calls upon the Legislature to authorize the spending of public money. That is not what this proposal is about.



Similarly, nothing in our proposal this afternoon calls on the Legislature to provide an avenue by which former members would presume to influence the work of the Legislature or of the government, nor would membership in the proposed association be automatic or mandatory. What is proposed is a voluntary association comprised primarily of former members of the Ontario Legislature, the operation of which would be funded by the members of the association themselves, mostly through the mechanism of annual membership dues.

The association is to be strictly non-partisan. The association is to train its activities on matters of fellowship and on matters relating to the institution of the Ontario Legislature and the parliamentary system, rather than matters relating to current partisan debate.

Just to flesh out that comment somewhat, certainly a large component of the motive behind the presentation this afternoon is to promote fellowship and concern for the well-being of former members, to give them a vehicle to maintain contact with one another and to provide a body which will be there for former members to turn to for guidance, for advice, perhaps, if necessary, for comfort when they cease to be members in this place. That certainly is part of the motive behind the recommendation this afternoon. It's by no means the only motive and it's by no means the only purpose that we see for the association.

As has already been noted, we believe that each member in this Legislature brings to the Legislature the wisdom and commitment to serve their community and their province. That commitment does not cease when the member ceases to serve as a member in this Legislature. But the experience the member receives while serving as a member in this Legislature can serve the interests of the Legislature in many ways. It is our hope that the association we contemplate can provide an avenue by which that experience and that commitment can be put to a useful, productive result. That too is an important component of the motive behind the association and it is our hope that will be an important part of the work of the association and of the members of the association.

To be honest, and although it is not part of the proposal before you that we are asking you to vote on, I would be less than candid with you if I failed to note that it is our hope that as a body, presumably to be created by the Legislature, the association would be permitted to have a home in the Legislative precinct. That is a question that would be brought before another body at another time under the appropriate circumstances. But I want to be candid with you this afternoon and tell you that that certainly is our hope for the association. Apart from that, however, we are not calling upon the resources of the public to be put at the disposal of this association in any way.

It is an object of the proposed association that it would put the knowledge and experience of its members at the service of parliamentary democracy in Ontario and elsewhere, and I want to emphasize that part.

To take all this discussion from the abstract and bring it to more concrete form, I draw your attention to the documents that have been provided this afternoon. I think each of you has a copy of a proposed draft bill for your consideration. As I've mentioned, it is drawn largely from the precedent currently established in Ottawa, and I put it before you as an indication of the result that we would certainly welcome from the processes of this committee.

Those are my remarks this afternoon. Thank you for considering this matter and thank you for hearing us this afternoon.

**The Chair:** Thank you very much to all you gentlemen. We'll have discussion and I'm sure there'll be a few questions.

**Mr Levac:** I want to start by congratulating you and expressing to the working group my heartfelt thank you for bringing this to our attention, and your words will not go unheard. I want to compliment you on a couple of issues. Of the objectives you've established, the two that struck a very strong chord with me were to protect and to promote the interests of former parliamentarians. The protection end of it really struck me as an important aspect of your findings. I'm sure M. Morin made reference to a situation that was dealt with a while ago. To speak to that issue is what really prompted me to say that—to foster a spirit of community among former parliamentarians. I think far too often it's: "You're used up. Thank you very much. Now you're gone." I compliment you on that.

1610

I also comment that if there is a way in which we can do this, if we can incorporate the request for ongoing records to continue or at least get established—the implication was that it was a very difficult matter for the working group to get those records. They may very well exist, but it doesn't seem that it was very easy for this group to do that. To assist them and to have this for the future, if we can incorporate somehow our ability to start taking those records as a legislative matter, it would be at the fingertips very quickly. I would say that could be found somewhere in this legislation.

The subcommittee, in their meeting immediately after the first part, had the discussion on the establishment of the framework, and I think all the members of the three parties agreed to that very well: "Let's get the bones and allow the working committee to put the flesh and the blood and the living spirit around them." The idea was that we say yes to this immediately, that we say yes, we support this. Your good work will be able to be built right around that, and we can get things moving so that the association is the creator of what it is they want, as opposed to our trying to frame it in any other way than what the association members would like to have happen.

I support, and I suggest to you that I don't know if anyone would not, a way in which we can find a home for the association, and I would encourage very much that it be in no other place than in this good place. It would speak volumes to what it is that you're speaking to



about keeping the spirit of us and you together. What better way to do that than have a home here?

My congratulations on four years of good, hard work and the spirit in which this was done. It speaks volumes for what you are speaking to.

My final comment, respectfully, is whether something can be done to incorporate comment on the families of the former parliamentarians. It speaks to the original point I made. It might not necessarily need to be mentioned, because there are other preambles I've read in the material that imply that would be part of it, but this speaks to the importance in which I hold, and I know all members would hold, the families. With the sacrifice the members gave, we know that the sacrifice our families have given in order for us to be here and do the things we've done is equal, or maybe even more. That would be my only kind of question, that if there's something we can do about incorporating that and maybe giving that as a piece of advice for the working group to incorporate it, I would appreciate that very much.

I don't have any questions, simply because I'm so impressed with what has happened and transpired that you have my undying support and commitment to see that that happens. I know, contrary to what some people say, that someday I will be a former parliamentarian. I like the idea that I would have the fellowship of someone to be able to count on. I appreciate all of the work that's been done. Unfortunately, I have to indicate that I have to leave for a bill signing. I will return if the meeting is still on.

**Ms Shelley Martel (Nickel Belt):** I won't ask any questions. I'll make two comments. First, there is a former parliamentarian whom I am well connected with who didn't tell me he had received a survey from you with respect to this particular association, so I will have to talk to him more about it, because I have not been lobbied by him. He continues to maintain a very strong interest in provincial politics and in this place, as you can well imagine, and I think that if there were some ways and means for his expertise and the expertise of many others, especially long-standing members, to be shared with other Ontarians, that would be a very good thing to do.

Second, I very briefly want to thank all of you, particularly you, Derwyn, for pursuing this for the last four years. What happened with Hans Daigeler was a tragedy that could have happened to any of us, there but for the grace of God go all of us too, at some point. I want to commend you for continuing to pursue it. If nothing else, that kind of emotional support is probably sadly lacking when people leave this place. Other people's memories of them being here last about two minutes.

I've seen that happen first-hand, and it can be a very difficult thing for a family to live with. In our case, the ex-MPP for Sudbury East left of his own accord. Having said that, even when he did, he felt at a loss for a long time, and this may be one mechanism to get away from that particular sense of loss for others, whether they're defeated or whether they leave on their own. I wish all of

you well. I can't see that there will be any problem of support from our party, I want to indicate that now, but I thank you for continuing to pursue it.

**The Chair:** Thank you, Ms Martel. We'll have to make sure that wasn't one of the names missed as a result of—

**Rev Shea:** Elie's is a name I know.

**The Chair:** Excellent.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Just very briefly, my professional background is in psychology. I'm a psychologist and I worked with suicidal kids and kids of families that had suicide in them. I just commend you and give both my political and professional support to this. That's all I have to say, Mr Chairman. Congratulations.

**The Chair:** Any further comments?

**Mrs Julia Munro (York North):** Yes. First of all I would just offer my thanks to this group, which has worked obviously very hard in providing this. I know there had been quite a bit of discussion about how in principle it was a good idea. I guess all of us are victims to the old story of, "Oh well, it's a great idea, but who's actually going to sit down and make it happen?" My congratulations to you on having made it happen.

My question is to the Chair. I want to know what are the procedural steps for this committee in terms of where we go from here, if you could clarify that for us.

**The Chair:** It's my understanding, and I'm sure the clerk will contradict me if I stray from the facts here, that at this stage it would be quite appropriate for us to receive any proposed amendments or additions to the draft bill that you see before you now. I don't mean to editorialize too much but it would appear, just having had a chance to review this, that they have covered all of the bases, spoken to in their comments here today, with very specific wording. We also have attached from the research branch the copies of British Columbia's, the federal and the Quebec acts, and again a very quick comparison reveals many similarities, particularly with the Canadian act.

I just indicated to Ms Martel, who has left to attend a bill signing, that we would certainly not cut off this discussion until she and Mr Levac can return. What I would like to throw out to the members still present right now is whether or not the draft paper that has gone through legislative counsel—and I see they have made a number of their normal improvements to more appropriately reflect traditional language used in bills—whether this bill as it's written now passes muster. Mr Levac offered two suggestions. I'm looking to our colleagues on the working committee. Perhaps, if I might suggest in the explanatory note (e), you could consider adding a clause "and act as a resource for former parliamentarians and their families," or words to that effect; and similarly, I believe Mr Levac's suggestion was that one of your objectives could be to maintain a database of addresses and other particulars related to former parliamentarians.

It may have been implicit, but making it explicit adds to the comfort level and reflects the input from Mr Levac.



**Rev Shea:** Assuming there's appropriate legislative support to make that happen for the information flow, but that's clearly what this association has to do.

1620

**The Chair:** The feedback we have received from legislative counsel is that they could by next Monday have a bill in a format they would be comfortable with and which would invite formal clause-by-clause discussion. So I am in the hands of the committee.

I certainly don't wish this whole process to appear as being unduly accelerated. However, given that the input has been derived from a working committee representing all three parties, and given that you have maintained a liaison with the House leaders, and that legislative counsel will have put their, say, stamp of approval just in terms of the language itself, I would turn to the two caucuses represented here today and ask whether inviting that any proposed amendments be submitted by next Monday is inappropriate or whether you could, through your House leaders, invite any appropriate comments.

**Mr Chudleigh:** I think that would be entirely appropriate, with the concurrence of the former members who are carrying this bill through. If you believe that any amendments that might be brought forward could be done by next Monday, we would be in your hands for this.

While I'm here, I again would like to add my voice to the congratulations of the former members in bringing this bill forward. It's a rare case when a member doesn't become a former member. My grandfather served in this House for 40 years and never became a former member because he died in office at the ripe old age of 82. He was determined not to become a former member, I suppose, and in those days that was possible.

The only other point I would make—I don't know if it requires an amendment or not—we should do what we can to make sure the office they have isn't on the fifth floor.

**The Chair:** An inside joke.

**Mr Chudleigh:** Anyway, congratulations. It's marvellous.

**Mr Parker:** Chair, I wonder if I might speak to this point. Ironically, the NDP representative is absent from the room just at this moment, but you will note that the working group has been strictly non-partisan with representation by all three parties. It was our intention to have all three parties represented before you this afternoon in the form of the working group. Tony Silipo, the NDP member of the group, is out of the country at present, and his caucus was unable to find someone to sub for him in time to meet this afternoon's meeting schedule. I wonder if I could prevail upon the committee, however, to leave the door open for Tony Silipo to make a presentation to this committee perhaps next week before the process advances too far down the line, just in case Tony does have a further comment he'd like to get on the record before you as part of the proceeding.

**Rev Shea:** Chair, if I can just pick up on that. Not to have a quarrelsome moment—

**Mr Parker:** We're from the same caucus.

**Rev Shea:** I'll wait for the Chairman.

Chair, while I appreciate the comments by my colleague, Mr Silipo was fully aware that we may be proceeding. He's not in the country. I would think that Mr Silipo is, as I mentioned in my opening comments, fully supportive of what's before you now. If this matter is brought back before you next Monday and if he's in the country, I think that's a perfect time for him if he wants to make a presentation at that point.

Where I have a concern with my colleague's comments, if he's not back until a few days after that, then it continues to drag on and it gets caught up in all the other legislative process. I think that is not something Mr Silipo himself would wish. So I would ask, subject to him being available, when you consider this, that you might ask him to make other comments. I suspect what you'll hear is an echo of what you've heard today, but nevertheless I would ask you to proceed on this as expeditiously as possible. This is extremely important. We still have a number of things to do to get organized, but we would like to be up and running certainly by the summertime so we can begin to do the database and so forth.

**The Chair:** Thank you, Reverend Shea. I think it's possible to accommodate both those points of view. The clerk advises me that there is no need to set a formal deadline for amendments. If Mr Silipo were inclined to attend and speak at the outset of our meeting on Monday, should he share any other observations that warrant an amendment to the draft bill, we can procedurally accept amendments from the floor. So I ask you to extend to Mr Silipo the invitation to attend next Monday, if he so chooses, and to speak at the outset.

**Mr Chudleigh:** Just a question to the former parliamentarians: I wonder if you have had any contact with Peter North, who sat as an independent, and his perception of where he might fit in this association.

**Rev Shea:** I am embarrassed, because I didn't bring my file with all the responses and can't tell you whether Mr North replied. I believe he did, but I can't be held to that. I'm not sure.

**Mr Chudleigh:** I think he might bring another perspective, not having been a member of a party. If he were to review the legislation, he might see—

**Rev Shea:** One or two other former members who were independents at one point or another did reply. None of them was the one who said he didn't want to have an association.

**The Chair:** Thank you both. Just to bring Ms Martel and Mr Levac up to speed, we were discussing the timing for our next steps. There was a consensus—but I certainly want to invite your comments as well—that we are at a stage with the draft bill and with building on the work done by the committee that it would appear appropriate that we set a fairly short timeline for any further input and proposed amendments. To that end, we discussed the opportunity to reconvene next Monday and

invite any amendments, including amendments from the floor.

We are going to extend an invitation to Mr Silipo to speak at the outset of the meeting next week, should he wish to add his comments, just to make it very clear that this is an all-party initiative. If Mr Silipo raises issues that require further amendments, the clerk has advised that it's totally acceptable to receive amendments from the floor, and the other members of the committee said they would be quite receptive to that.

If that timing is acceptable to all three caucuses, then I would like to propose that that be our next order of business and, that being the case, to invite any final comments anyone might wish to make this afternoon.

**Mr Barrett:** Just a final comment: I certainly appreciate the presentations at the witness table by our former members. They have enabled me to understand a little better where we are heading with this. I assume you have a bit of a mechanism to communicate some of these ideas to sitting members who haven't had the privilege of sitting in on this meeting—your goal of promoting the betterment of former members. I think that's going to occur, in a lot of ways, just through fellowship and collegial interaction. I've been a member of a fraternal organization for a number of years and it's natural to involve family members, and I support that being inculcated into the legislation if that is required.

Certainly no one argues against the experience and wisdom that lie among former members. That's going to benefit parliamentary democracy in Ontario, as described in the explanatory note. So I really appreciate the presentations today.

**The Chair:** Just one last point, if I may, Mr Levac and Ms Martel. I suggested that the two comments you made might very well be embodied, the first in the objects, the explanatory note, under (e), perhaps add a clause "and act as a resource for former parliamentarians and their families," to raise that issue, and under objects, under (3) "attempt to maintain a database of addresses and other particulars related to former parliamentarians," which hopefully will address your other concern.

**Mr Levac:** I appreciate that very much, Mr Chair. Just further to what you asked before, I have no problems whatsoever with looking at Monday. But I do want to note that I hope it doesn't bump Bill 28 to Easter. We have to watch for that—just my own personal observation.

**The Chair:** We will certainly guarantee that the timing of the next order of business, Bill 28, meets with the approval of all three caucuses.

With that, if there's no further business, on behalf of the committee, I thank the four witnesses. You're certainly welcome back next Monday. The committee stands adjourned until 3:30 next Monday.

*The committee adjourned at 1630.*





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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 17 April 2000

# Journal des débats (Hansard)

Lundi 17 avril 2000

**Standing committee on  
general government**

Association of Former  
Parliamentarians

**Comité permanent des  
affaires gouvernementales**

Association d'ex-parlementaires



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 17 April 2000

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 17 avril 2000

*The committee met at 1533 in room 151.*ASSOCIATION OF FORMER  
PARLIAMENTARIANS

Consideration of the designated matter pursuant to standing order 124 relating to the establishment of an association of former parliamentarians.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'd like to call the standing committee on general government to order for the purpose of considering a matter designated pursuant to standing order 124 related to the establishment of an association of former parliamentarians.

Most of you were here last week and we had the opportunity to hear from most of the working group involved over the past few months in the production of the proposal we're dealing with here today. One member of the working committee was not able to attend last week and he has been able to join us today. That gentleman is Mr Tony Silipo, formerly a member from the NDP caucus. Mr Silipo, I invite you to come forward and say a few words if you are so inclined.

**Mr Tony Silipo:** Thank you, Mr Chair. My voice is a bit hoarse, but I think you can hear me.

First of all, thanks for the opportunity to speak. I was not in the country when you were dealing with this matter last week, but found out upon my return. I know that the best thing to do with something that is going well is to leave it alone, so I just wanted to put on the record my own support and to ensure that we have on the record all-party support from the people who have proposed the idea, outside of those of you who sit in the Legislature. I welcome the fact that this initiative is being supported by all three parties in the House. I think it's a good initiative to have a parliamentary association in the way that we've suggested. I also particularly wanted to say that I think it's really appropriate that this initiative be undertaken the way it has through this committee, and I gather it will be the first if it does proceed, which I hope it does and urge you to make sure that it does, under this new rule. This is also something to be kept in mind because it is a way above and beyond the partisanship that is appropriate in most matters around this place. It's also appropriate that, when there are matters such as this one, they be treated in a non-partisan manner and proceed therefore

with the kind of support that I hope will continue to be there from this committee.

I'm not going to go into the importance of the association. I know that my colleagues who have spoken before have outlined that for you. I simply say that I certainly believe that having a parliamentary association is going to be useful, not just for the former members but indeed as a part of the workings of the Legislative Assembly of Ontario in terms of providing a space for and a place through which former members can be gathered and through which particularly they not only can support each other but, more importantly, can provide support to the Legislature of the day, at the Speaker's office and any other, in terms of the expertise, from speaking engagements to any other types of activities that the Legislature may wish to call upon us to do.

With that, Mr Chair, again I just say thank you to the committee for the opportunity to speak. I certainly encourage you to proceed with this matter. If there are any questions that you have, I'd be happy to try to answer them.

**The Chair:** Thank you very much, Mr Silipo. I would invite any members of the committee who might have questions for Mr Silipo to ask them now. Seeing none, I want to thank you very much. You have certainly now put meat on the bones to the suggestion that this really was something with all-party support, and perhaps there could be no better sort of initiative to make the first bill that goes through a committee standing order 124. I very much appreciate your work on the committee that has brought the bill to this stage and for taking the time to come before us here today.

**Mr Silipo:** Thank you.

**The Chair:** With that, you'll recall last week we discussed the opportunity to receive any suggestions as to possible amendments or improvements to this bill. The Clerk advises me that because this isn't, strictly speaking, a referral from the House and therefore it does not need to follow the formality of clause-by-clause consideration, we can be a little more flexible in how the discussions proceed throughout the course of these deliberations. However, I'd like to make a suggestion, if it meets with the approval of the committee, that we at least direct ourselves to each section as we go through and invite questions section by section, if not strictly speaking clause by clause. If there are no objections to that, I wonder if anyone has any comments about section 1.

**Mr Dave Levac (Brant):** It's not really section 1 but it starts the whole process. We made a recommendation that we look at the name and we got some feedback from Mr Parker that indicated that, as I look at the material, the original mover, Mr Barrett, established an "Association of Former Parliamentarians," and in the written explanation it's the "Ontario Association of Former Parliamentarians." Can I get a clarification as to which one it is?

**The Chair:** I think the draft bill is the one we would take as the final answer, so it's the Ontario association.

**Mr Levac:** That satisfies my concern originally about "provincial" or whatever. So if you say "Ontario," I agree with the comment. When I first made my comment, it was based on the mover, so my concern was taken care of just by the name. I appreciate that.

**Mr Joseph Spina (Brampton Centre):** Somewhat along the same lines, I like the name, Ontario Association of Former Parliamentarians, but I was concerned. Because I know, and I've been given to understand, there's a federal organization of former parliamentarians, I wondered if there might be some mild confusion perhaps that this is the Ontario association of that body or if the descriptive word "Ontario" be more appropriate to the word "Parliamentarians." So it would be Association of Former Ontario Parliamentarians. I don't know if that would make any difference or if the committee has thought about it.

1540

**The Chair:** Again, because we're not as bound by the normal rigorous structures applying to witnesses, with your indulgence, rather than my offering a response to that question, I'd like to invite Mr Parker to come forward, because he's prepared a synopsis of the working committee's feedback on some of the suggestions that were heard last week. Mr Parker, if you'd like an opportunity—

**Mr John Parker:** If you take me, you get Derwyn Shea too.

**The Chair:** Fair enough.

**Mr Parker:** Thanks for the invitation. To tell you the truth, we are, for all intents and purposes, indifferent to the name. We just want to keep it simple. We don't want it cluttered up with a whole lot of descriptive terms. We've been working with the name "Ontario Association of Former Parliamentarians." If the committee is happier with "Association of Former Ontario Parliamentarians," I don't think you'll get any quibble from our side.

**Mrs Julia Munro (York North):** If you look at the section entitled "Non-partisan nature" at the bottom of the page, section 3(2), and then go to section 4, "All former members of the Legislative Assembly of the province of Ontario are eligible ..." I wonder if that clarifies this issue that those are the only people who would be eligible for membership and that might clarify the discussion here.

**Mr Peter Kormos (Niagara Centre):** I was wondering if people have addressed the matter of the acronym. Does one acronym have a better ring to it than the other?

Some of you have been sensitized to that in a way that I could never be.

**Mr Parker:** Is there a better one you would like to suggest?

**Mr Spina:** Is that OAFP?

**The Chair:** That would be AFOP.

**Mr Kormos:** Exactly. You've got choices to make here.

**Mr Parker:** If the committee is indifferent, frankly the preference of the working group would be to leave it with the name that's been recommended. But obviously we're in your hands.

**The Chair:** I don't see a great groundswell of opposition to that, so thank you for those comments.

Are there any specific suggestions under section 1? Let's just work our way through, then. There aren't that many sections. Perhaps I can even pre-empt the time to do that by asking whether—this will make interesting reading in Hansard. The clerk has prepared a check sheet to go through as we normally would, without the clause-by-clause but by section. If it's the consensus of the committee that section 1 should stand as is, we'll move on to section 2. Does everyone agree with that? Agreed. Section 3, the objects of the association, any comments?

**Mr Levac:** There was a comment from Mr Parker with regard to former members and the families of the former members. I was satisfied with that explanation, as long as it's understood. In my own particular case it was the major concern I had, that family become part of that. The actions that were described were inclusive of that. That's almost like an overriding philosophy, but it doesn't have to be in writing, and I'm assuming that.

**The Chair:** That was section 3. Section 4 takes us back to membership. All agreed? Agreed. Section 5, the powers of the association?

**Mrs Munro:** Just a minor detail in section 4(2)—"he or she shall be deemed to have resigned his or her membership"—

**Mr Donald Revell:** I can speak to that, Mr Chair. We have in Ontario for some time now been using this technique, which is a non-sexist drafting technique that has been developed and used in some jurisdictions. This is a case where we could have used "his or her." The reason we developed using "their" to replace "his or her" is that when you get into that string of "himself," "itself," and so on, you just get this long string of words that really is redundant. This is approved in a lot of the non-sexist drafting literature, so this is the solution we use in Ontario.

**The Chair:** Over and above that, did you have a concern about the "deemed to have resigned"?

**Mrs Munro:** Only that in the next line you've got, "on the day that they are sworn in."

**Mr Revell:** That should be "he or she." Sorry, yes.

**The Chair:** My compliments to the attentiveness of the committee members.

Given that the last step of this process this afternoon hopefully will be to refer this to the House, I guess we



should formally ask for that change to be made. Ms Munro, do you want to propose wording?

**Mrs Munro:** I would take the advice of legal counsel, that "he or she is" sworn.

**The Chair:** I just need you to put the words into Hansard. So, replacing the word "they": All in favour? Contrary, if any? Thank you.

Moving on, again section 5, that question was put. All agreed with that? Agreed.

Section 6, any comments?

**Mr Ted Chudleigh (Halton):** I wonder if Mr Parker could expand on section 6 as to its purpose and intent.

**Mr Parker:** I wonder if you could just guide me as to where you see—

**Mr Chudleigh:** Why would there have to be a clause in the act here to allow the association to carry on its business activities outside the province of Ontario?

**Mr Parker:** It's simply to give the association the latitude to carry out activities wherever they deem it appropriate to do so without running the risk of falling afoul of some constraint that was unanticipated. It is simply to avoid binding the hands of the association.

**Mr Chudleigh:** It's not a given in the association that you can meet at the call of the board. Further, at subsection 8(4), the board can meet in any place as the chair considers necessary.

**Mr Parker:** It's not just a matter of meeting, I suppose. It's also a matter of carrying out activities. Just to remove any ambiguity or any doubt, this provision is included so that it's clear that the association can carry out its activities wherever those activities need to be carried out.

Maybe for the sake of an example, it's a fraternal organization and certainly it's also intended to represent or to pursue the interests of parliamentary democracy in Ontario and elsewhere. I think that provision is in the bill. Being fraternal, the members may not always be in Ontario, but there may be a need to have a fraternal association with an individual who is outside the province. In the activity of pursuing the interests of parliamentary democracy, that may involve dealing with other parliamentary democracies elsewhere in Canada and around the world. This provision simply removes the argument that any such activity that would take the association outside the borders of Ontario might be outside the jurisdiction of the association.

**The Chair:** Thank you. Mr Spina.

**Mr Spina:** I was just trying to think of an example, because I agreed with Mr Chudleigh about the meeting time. Notwithstanding the fraternal versus maternal—and I'll let Mr Revell iron that out—I was thinking that if the organization chose to have a fundraising golf tournament in Orlando in January, that would fully authorize them to do that sort of thing. That's all I'm thinking of. Is that a reasonable example of what you might want to do?

**Mr Parker:** I think the board will be interested in hearing recommendations from all sources, and they will be considered as appropriate.

1550

**Mr Spina:** And US\$150, no doubt.

**The Chair:** Are there any other questions on section 6?

Section 7?

Section 8?

**Mr Chudleigh:** In subsections 8(4) and 8(5) it suggests that they have one meeting a year and that the meetings will be called as the chair considers necessary. Having been involved in association business, sometimes you end up that on a given issue, at one point or another, the chair may not agree that a meeting is actually necessary, whereas the majority of the board may consider that a meeting might be necessary. Would it be appropriate that you have a clause in there that would suggest that a majority of the board could at any time call for a meeting of the board of directors?

**Mr Parker:** I'm going to suggest that that would be an appropriate matter to be considered in the bylaws. I'm not sure that we need to get involved in redrafting the bill to address that point, but it's a point certainly worth considering.

**Mr Chudleigh:** You may want to note that, I think it was in 1987 or 1988, it did cause me some problems in association business. It would have been much easier if we'd had a clause like that.

**Mr Spina:** Along that same line, only on that particular clause, I was just wondering, in the original presentation to the committee there was a recommendation that the Legislative Assembly be the home, as it were, or the office for the organization. I really don't see that specified in here. Is that something that would be open as an option after the legislation was introduced, perhaps as part of the regulatory environment, or would you want it included in the bill itself?

**Mr Parker:** If I can shed some light on that, it was the intention of our working group to put this proposal forward with the fewest possible strings attached, to make it as easy as possible for people to say yes to it. As soon as you start complicating it with other factors, then you invite debate and perhaps greater scrutiny in areas that go beyond the principles of the exercise. Our hope was to get the principle established and then, through another forum—I think the Board of Internal Economy and the Speaker's office is the way we should be going—and through that avenue look at issues such as space for the association. But what we're looking for from the Legislature is simply the authority to convene an association and to carry out activities. Then it will be up to the association to decide whether it wants to pursue those other possibilities. But we're not asking this committee or the Legislature for that type of permission just now.

**The Chair:** I was talking to legislative counsel, who expressed some question about whether or not Mr Parker's suggestion about the bylaws would in fact cover subsections 8(4) and 8(5), that you might actually need to make that change. If that's the case, Mr Chudleigh, would you like to offer a proposed amendment to the wording?



**Mr Revell:** I think Mr Parker said that the idea of holding meetings at the request of the board members could be handled by the bylaws. Just reviewing the power on this issue, it says "may make bylaws respecting the calling and holding of meetings." But in terms of the way section 8 is drafted, it would seem that the whole power to call board meetings is, first of all, "at such times and places as the chair considers necessary," and "at least once in each year." I have a feeling that in strict law maybe you would read that down—the bylaw-making power cannot require the chair to call more meetings than that.

I think that something like this might handle the situation, Mr Chudleigh, in terms of wording. I obviously haven't had a chance to discuss this with Mr Parker, who has done a lot of work on this, but something like, "On the request of a majority of the members of the board, the chair shall call a meeting of the board at its head office," so there is always a method of inducing the chair to call a meeting, if there's a potential problem, I mean. I'm just saying that in terms of what you've raised, Mr Chudleigh, I think there's no answer to it in the bill as it is presently worded.

**Mr Parker:** Frankly, I'm concerned that the chair we're likely to start with will probably call more meetings than I want, so the possibility that we wouldn't have enough meetings hadn't crossed my mind. But I have no quarrel with the suggested amendment.

**Mr Chudleigh:** That sounds like it would cover my concerns.

**The Chair:** Someone would have to formally make that—

**Mr Chudleigh:** I so move.

**Mr Revell:** Mr Chudleigh moves that section 8 of the bill be amended by adding the following subsection:

"8(5.1) On the request of a majority of the members of the board, the chair shall call a meeting of the board at its head office."

**The Chair:** Does anyone need that in writing? Any questions?

**Mr Spina:** Is "at least once a year" still there?

**Mr Revell:** Yes, "at least once a year" remains.

**The Chair:** Any further discussion? Seeing none, I'll put the question.

All those in favour of the amendment? Contrary, if any? The amendment carries.

My only question would be, do you read it as 5.1 or will you renumber it?

**Mr Revell:** We will renumber it before the bill is printed for introduction.

**The Chair:** Any further comments on section 8? Seeing none, we will move on.

Section 9? Section 10, the bylaws? Section 11? No questions there. Section 12? Section 13? Section 14? Finally, section 15, which deals with the title?

Seeing no further questions, the final question I have to put to the committee is, and this is slightly different from the normal format: Shall the committee adopt the text of the draft bill? On this I would like a formal vote, obviously.

All those in favour? Contrary, if any? It carries.

**Mr Spina:** Can I ask for a recorded vote, Chair?

**The Chair:** You are too late, Mr Spina, but for the record we will note that it was unanimous, with the members of all three parties supporting it.

At the risk of sounding overly theatrical, this is certainly a historic event, because it is the first time that someone other than the government or a private member has produced legislation for the consideration of the Legislative Assembly.

The last question I have to ask the members here today is, and I apologize to the two people subbing today, but only permanent members of the committee can avail themselves of this opportunity: I am told by the clerk that my name will automatically appear as a sponsor, but there is an opportunity for all other members of the committee to be named as sponsors of the bill should they so desire. By a show of hands, all those in favour? The clerk will read off the names of the permanent members.

**Clerk of the Committee (Mr Viktor Kaczowski):** Mr Chudleigh, Mr Dunlop, Mrs Munro, Mrs Bountrogianni and Mr Levac.

**The Chair:** I'm going to ask the clerk if he will take it upon himself to contact the two people who are not here today and extend the same opportunity to them. The bill, of course, will be referred to the Legislative Assembly, and we'll have an opportunity to make the normal introductory comments. It's certainly going to be my intention to thank everyone on the committee and the working group, and to stress that this is something that clearly has had all-party support. I can't think of a better way to start the new standing order 124 tradition around here. To all the members, thank you very much for your participation in this. In particular to the former members who were part of the working committee, thank you very much for applying yourselves to the staff. Congratulations. That takes us through this piece of business.

Very briefly, you will recall we asked for any proposed amendments to Mr Wettlaufer's bill to be tabled by the close of business Wednesday. Given that we can't consider a bill until the deadline for amendments has passed, and that Monday next week is a holiday, I'm going to propose that if the committee sees fit we will deal with Mr Wettlaufer's bill next Wednesday. If that meets with your approval, the committee stands adjourned until then.

*The committee adjourned at 1601.*





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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 26 April 2000

# Journal des débats (Hansard)

Mercredi 26 avril 2000

## Standing committee on general government

German Pioneers Day Act, 1999

## Comité permanent des affaires gouvernementales

Loi de 1999 sur le Jour  
des pionniers allemands



Chair: Steve Gilchrist  
Clerk: Viktor Kaczkowski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 26 April 2000

Mercredi 26 avril 2000

*The committee met at 1530 in committee room 1.*GERMAN PIONEERS DAY ACT, 1999  
LOI DE 1999 SUR LE JOUR  
DES PIONNIERS ALLEMANDS

Consideration of Bill 28, An Act to proclaim German Pioneers Day / Projet de loi 28, Loi proclamant le Jour des pionniers allemands.

**The Chair (Mr Steve Gilchrist):** I call the standing committee on general government to order for the purpose of considering Bill 28, An Act to proclaim German Pioneers Day. As you will recall, we decided two weeks ago at the subcommittee, then ratified it with the entire committee, that we would deal with Mr Wettlaufer's bill today. Mr Wettlaufer has indicated he would like to make some brief comments. I certainly would extend a similar opportunity to all three parties, if they so desire. I'm in your hands. We can set a maximum time limit for that, although I don't anticipate that the comments would be long-winded. I don't want to be presumptuous, though.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Mr Chair: definitely I'm supporting the bill, but I need to get an answer to my question. Does this mean that employers would have to give a day off on that day?

**Mr Wayne Wettlaufer (Kitchener Centre):** Good heavens, no.

**Mr Lalonde:** That was my only question. I will support this.

**The Chair:** Mr Wettlaufer, perhaps you'd like to start us off.

**Mr Wettlaufer:** I'd like to thank all the members of the committee, and you as well, Mr Chair, for hearing this bill. I want to make a couple of comments relating to the speeches that were made in the House during debate on private members' day. There was a comment made by, I believe, the member for St Catharines, Jim Bradley, that it was particularly relevant for the Waterloo region. I really want to point out that while the bill is relevant for the Waterloo region, it is not relevant just to the Waterloo region; it is particularly relevant to many areas of Ontario which have sizable percentages of German settlement: the Niagara Peninsula, Haldimand-Norfolk and Ottawa, and certainly the Renfrew area has a fairly large settlement of German Canadians.

The importance of the bill is that in the anti-German hysteria following the two wars, a lot of German people

who had contributed much to Canada's development and to Ontario's development felt that they were second-class citizens. I think we can understand that, but nevertheless the time has come to correct the damage that the hysteria caused. For instance, in the research I was doing, which may ultimately lead to a book, I have found that many books that were supposed to exist in libraries across the province have been destroyed. They were destroyed some time after the First or Second World War. Many of the German settlers had descendants who fought in the Canadian Armed Forces in World War I and World War II, and many of those German Canadian soldiers died, gave their lives for our freedom and for our liberty.

I felt that this was a time for this bill to pass, to give some credence to the German settlement fact and what it has done. The German settlement is the third-largest settlement of ethnic peoples in Ontario, in fact in all of Canada. I think they would like to be recognized.

**The Chair:** Are there any further comments?

**Mr Lalonde:** The only additional comment I would have is I really appreciate the culture. I have to say that because the first time I heard about the Oktoberfest I was in Munich. I was supposed to be there for about an hour and finally I spent two days there, I enjoyed it so much. A lot of people from my community travel to Kitchener every year to participate in the celebration. We francophones in eastern Ontario respect the Germans a lot.

One other thing: Being a former printer myself and having had to do with the purchase of the equipment, I have to say that the German technology was one of the most advanced in the printing operation we had at the Canadian government printing bureau. This is how I got to know more about the German community. I think it shows that we appreciate what they have done for our country.

**Mr Rosario Marchese (Trinity-Spadina):** I don't think you would find any member on this committee or in this House, in the assembly, who would oppose this. I think everyone accepts and receives the motion with a great deal of sympathy and support.

Just a point, though: We have such a good history of social democracy in Germany, I just don't know what happened to Mr Wettlaufer. It's strong there in Germany, right? What happened in that transition from Germany to Canada?

**The Chair:** We'll consider that a rhetorical question.

**Mr Marchese:** It was interesting that many years ago, when I looked at the number of different communities



that were in Canada, the Ukrainians were by far one of the largest groups of people who settled in Canada. I think there were about two million Ukrainian Canadians, an incredible number of people. I didn't know that when I first saw that figure. I think the German Canadians fall second.

**Mr Wettlaufer:** Some 2.8 million to 3 million Canadians are of German descent, a minimum of 2.8 million.

**Mr Marchese:** Are they spread out politically?

**Mr Wettlaufer:** About 2.5 million in Ontario.

**Mr Marchese:** So it's a large number and I think most people don't know that. That's one of the points I wanted to make. It was a surprise to me to find out how many different groups we have, naturally, but particularly for Ukrainians and Germans how high that number is, and the Italians then come third after that. I suspect that Ukrainian Canadians and Italian Canadians are going to get upset about this, right?

**Mr Wettlaufer:** I hope not.

**Mr Marchese:** They're going to say, "What about me?" As usual with these kinds of bills, there will be other people who probably would have said we should have been more inclusive. Then the point is, where do you stop? Naturally you have a bill to proclaim German Pioneers Day and that will begin the process, and I'm sure other groups will follow.

I suspect there may be some people who will take issue with the idea of "as one of the founding groups." Usually aboriginal Canadians are very angry at the rest of us for talking about founding peoples, that is, the French and the English, because aboriginal people say, "We were here, you didn't find or found anything." I suspect there is going to be some opposition to that particular word, not just from aboriginal people but possibly others. We should anticipate that there will be some disagreement with the use of that word and/or possibly opposition to the use of that. But I'm supporting this bill here today.

**The Chair:** Any additional comments from the government side?

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** I had the opportunity to speak to the bill and that's in Hansard. I won't take any further time, other than to say that my riding of Haldimand-Norfolk-Brant has a well over 200 year history of immigration of Pennsylvania Deutsche, German Mennonite, to our area. Hessian soldiers, allies of the crown, have a presence in my hometown of Port Dover. More recently, after the First and Second World Wars, much of the Norfolk sand plain was resettled by German people, more recent, as I consider it, tobacco pioneers.

Very recently we had another wave of German Mennonites returning to Canada from Mexico and settling in the Houghton area in between my riding and Aylmer. Their contribution to the unique agricultural requirements in my riding is quite significant to this day. I certainly continue in support of this. In my riding, people of German-speaking background are number two after the British and, as I recall, in our area those who list Dutch as their mother tongue are number three. I don't know

whether that's going to lead to another bill down the road.

**Mr Dave Levac (Brant):** I appreciate the opportunity. My apologies for my tardiness. I was meeting with some people and tried to get away, but you know how things go.

In support of the bill, I can only tell you that Mr Wettlaufer and I have had some discussions in the past, while this was first introduced, and I indicated to him my willingness to support and act on behalf of his concerns that this be brought to our side, as they have been, and we will continue to do so.

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The interesting comment I would make is that I am in favour of this as a celebration. We have to recognize that these types of celebrations are (1) to educate, (2) to celebrate in a positive way the contributions of all citizens of this province and indeed this country, and (3), a part which I believe is very important in this day and age, to show some pride in what we have done in the past so our connection to history, as Mr Wettlaufer so eloquently did in his introduction, shows to us the importance of recognizing the contributions of all Ontarians.

This is a good first step and I would suggest to him, as well as to all members, that in recognizing this some people may fear an avalanche of, "Let's make it this day and that day." I say bring it on. Bring on that positiveness, bring on that celebration and bring on that education. We can only become better people if we recognize the deeds and the good acts that all of us have contributed in our cultural way to this province.

I congratulate Mr Wettlaufer for bringing this good deed to our attention. We on this side, as echoed by my colleague, will fully support this bill.

The questions that get asked can be answered, and I'm sure as we pull through the rest of this session, those questions will be answered and concerns laid to rest very quickly, because I really do like a celebration.

**Mr Marchese:** If I can for the record, celebration is one thing, of course, and a lot of people in this country say, "We don't mind celebrating our roots; what we want is equality," which is another discussion connected to this whole issue of celebrating our roots. A lot of people in our communities don't want the song and dance. They're tired of it. They want to move more to issues of equality.

I wanted to tell you that we're losing some of our international languages in our school system, which connects to this issue, I think. A lot of the German Canadians have kept their language, but in a globalized economy, we should have international language skills and we're losing them for a variety of reasons, one of which is Bill 160, which essentially lacked funding and squeezed education to the extent that international languages have no place in the system any more. It's sad. That's for the record.

**Mr Wettlaufer:** Chair, if I may?

**The Chair:** If you dare.

**Mr Wettlaufer:** German Canadians have often told me they are very proud of the fact that they have con-



tinued their German heritage, their culture and their language at no cost to the taxpayer.

**Mr Marchese:** Shall we continue the debate?

**The Chair:** Perhaps as you said, Mr Marchese, it speaks to a different perspective than the one we're discussing here today.

You will recall that last Wednesday was the deadline for the submission of any amendments. The clerk advises me none were received, so with your indulgence, if there is no further discussion, I'd like to proceed to clause-by-clause consideration of the bill. It should be fairly expeditious, I imagine, based on the comments we've heard so far.

Are there any comments, questions or amendments to section 1?

**Mr Levac:** To Mr Wettlaufer, if it's permissible, Chair: There was a concern brought up by a member of the NDP that it said "founding groups." Was there any concern or any thought given as to whether or not the word "founding" would be apropos or whether or not it would be worth keeping or worth removing or anything, to avoid any sensitivities in case anyone does have a sensitivity towards the word "founding"?

**Mr Wettlaufer:** I would have no objection to taking that out.

**Mr Levac:** That would probably require an amendment.

**Mr Wettlaufer:** Yes, it would.

**Mr Levac:** So I'm not prepared to ask that. But it's just my inquisitive nature, when people bring up concerns, to see if we can get a response. I'll defer to Mr Marchese, if he shares the concern or if he wants to take any action. But I think it would require an amendment, wouldn't it?

**The Chair:** Our problem, Mr Levac, is that what you seem to be talking about would require an amendment.

**Mr Levac:** So I withdraw the comments. I don't know how that can be addressed, if it can be at all.

**The Chair:** Again, that's the preamble to the bill. I guess one could argue that the substance of the bill is the actual clauses that we're about to vote on and the preamble is more of a narrative that simply gives the sponsors an impression of what will be done. I think the messaging, should the bill receive third reading, would be back in the hands of every member taking the initiative to bring this issue forward in their communities.

**Mr Levac:** I appreciate that. I'll defer that to Mr Marchese to decide how he would want to—since he brought it up.

**Mr Wettlaufer:** One of the comments that was just raised here is that it does say "As one of the founding groups of Ontario."

**Mr Levac:** I read it that way myself, but since it was brought up I wanted to put it on the record.

**Mr Marchese:** It will bring about some concern and opposition; I have no doubt about it. I suspect a lot of people won't know about this so it's not going to be an issue in the earlier period, but once people start focusing in on this possibly they'll see it. The preamble is just as

powerful as what follows, I would argue. I know "As one of the," and who else is there—the fact that you haven't received amendments doesn't mean that we couldn't change it here, though.

**The Chair:** With unanimous consent, yes.

**Mr Marchese:** Of course. It's just a way of avoiding a problem. I just raised it because I believe some might raise it as an issue, and do we want that? I don't know.

**Mr Wettlaufer:** I don't think it's major enough.

**Mr Marchese:** If we delete the word we need another adjective to perhaps fit into it.

**Mr Wettlaufer:** Yes.

**Mr Barrett:** It would be relatively facile to make this change. However, I think it's accurate. We use the terms "immigrant," "settled," recognized as early settlers. I know many German people were United Empire Loyalists. As a founding group, I think the accuracy can't be questioned, but I know there are other considerations.

**The Chair:** Could I offer, for the committee's consideration, that it does say "founding groups of Ontario." I think you could argue, Mr Marchese, that as opposed to the original settlement of Canada, Ontario as a specific political entity was created as a result of a number of initiatives that are quite distinct from the totality of Canada's experience. Whether or not the word "Ontario" makes a difference to you I leave to your consideration.

**Mr Marchese:** I'm just raising an issue that I know, whether it is something that speaks to Ontario or Nova Scotia or Newfoundland, is the same. Aboriginal people oppose language that speaks about founding nations, and that generally means French and English. They're not just opposed but angry at the fact that somehow these two groups have appropriated what was theirs. Right? They were here. They were the ones who founded it as the people who were here. So my sense is that their opposition isn't just to that at the national level but at any level.

We can always make a defence for any argument, right? That's the point. You're all doing that. I could do that too. I'm just raising the other concerns that I know some will have. But if most of you feel comfortable with that, we could probably proceed with this and just leave it alone.

**The Chair:** OK. Which takes us back to section 1 per se. Are there any comments, questions or amendments on section 1? Seeing none, I'll put the question. Shall section 1 carry? Carried.

Are there any comments, questions or amendments proposed for section 2? Seeing none, I'll put the question. Shall section 2 carry? Section 2 is carried.

Section 3: Are there any comments, questions or amendments? Seeing none, shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? The bill is carried.

Shall I report the bill to the House? Agreed.

We've probably set a new record for time spent considering a bill. That's two firsts in the short tenure of all of us in the session.

**Mr Wettlaufer:** Thank you, everyone.

**The Chair:** Thank you very much, and congratulations, Mr Wettlaufer, and all the best during third read-

ing. With that, the committee stands adjourned until the call of the Chair.

*The committee adjourned at 1551.*





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## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

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Wednesday 10 May 2000

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Mercredi 10 mai 2000

## Standing committee on general government

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## Comité permanent des affaires gouvernementales

Rapport du sous-comité

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concernant la santé mentale



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 10 May 2000

Mercredi 10 mai 2000

*The committee met at 1616 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Vice-Chair (Mrs Julia Munro):** I'd like to welcome all of you to the standing committee on general government. We are going to begin this afternoon's proceedings. I must apologize for the lateness of our start, but we are of course under the rule of the House in terms of when we are able to start. We're going to begin this afternoon with the report of the subcommittee. I'd ask Mr Clark to do that for us.

**Mr Brad Clark (Stoney Creek):** Your subcommittee met on Thursday, May 4, 2000, and Monday, May 8, 2000, to consider the method of proceeding on Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996, and agreed to recommend the following:

(1) That the committee meet in Toronto at its regularly scheduled meeting times on the following dates: Wednesday, May 10, Monday, May 15, Wednesday, May 17, Monday, May 29, and Wednesday, May 31; that the committee meet in Toronto on the evening of May 15, and that the committee meet in Hamilton on Friday, May 12, Thunder Bay on Tuesday, May 23, and Ottawa on Wednesday, May 24, 2000.

(2) That the Chair of the committee write to the House leaders to request authorization for the committee to meet beyond its regularly scheduled meeting times in accordance with the schedule set out in paragraph (1).

(3) That the committee invite the Minister of Health to make a statement to the committee on the final day of committee hearings. The time allocated for caucus statements and questions will be determined at a later date.

(4) That the clerk of the committee be provided with the names and contact information of any expert witnesses that each of the three caucuses would like to invite to make presentations to the committee.

(5) That an advertisement be placed in the largest circulation daily paper in each of the following cities: Toronto, Hamilton, Ottawa and Thunder Bay, as well as in the Ottawa French-language daily, and local papers in the communities of Fort Frances, Kenora, Dryden and Marathon. Notice of hearings is also to be placed on the Ontario Parliamentary Channel and the committee's Internet Web page.

(6) That the deadline for the receipt of requests for those wishing to make an oral presentation be no later than 48 hours (two business days) prior to the commencement of the hearing on a given day.

(7) That time for those requesting to make oral presentations be allocated on the following basis: 30 minutes for expert witnesses, 20 minutes for groups and organizations and 10 minutes for individuals.

(8) That the Chair and clerk of the committee be authorized to schedule witnesses and to make whatever logistical arrangements that are necessary to facilitate the committee's proceedings.

(9) That the deadline for the receipt of written submissions be 5 pm on Monday, May 29, 2000.

(10) The witness expenses be paid subject to approval by the subcommittee.

(11) That the legislative research officer provide a summary of the oral presentations to the committee upon the completion of public hearings and to undertake any other research that may be requested.

(12) That the clerk of the committee be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Vice-Chair:** Any discussion, any debate? Moved for the acceptance of the report of the subcommittee?

**Mr Garfield Dunlop (Simcoe North):** So moved.

**The Vice-Chair:** All those in favour? Agreed.

BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

## SCHIZOPHRENIA SOCIETY OF ONTARIO

**The Vice-Chair:** We are now able then to proceed with the presentations. I'd like to ask for the Schizophrenia Society of Ontario, the provincial office, if those

making a submission on their behalf would come forward to the front.

Welcome. If I could ask you, for the purposes of Hansard, to introduce yourselves and then you may begin your presentation.

**Mr Ted Fielding:** My name is Ted Fielding. I'm president of the Schizophrenia Society of Ontario.

**Ms Janice Wiggins:** My name is Janice Wiggins. I'm the executive director of the Schizophrenia Society of Ontario.

**Mr Fielding:** Thank you for allowing us the opportunity to appear here this afternoon. I'm pleased to say that quite a few members of our society are here supporting us and it's nice to see such a good turnout on such short notice.

I'd like to start by just giving you a thumbnail sketch of the Schizophrenia Society of Ontario. It was founded in 1979 and its mandate includes educating the public on schizophrenia, supporting people with schizophrenia and their families, and advocating for better treatment, care and services for people with schizophrenia. The society has 34 chapters that cover the entire province, from Toronto to Thunder Bay and Windsor to Cornwall.

The Schizophrenia Society of Ontario has been working for over 20 years to alleviate the suffering caused by this complex brain disease, and we are convinced that Brian's Law represents a large step towards the creation of a more flexible mental health system that can better answer individual needs.

Just a brief comment on what schizophrenia is. Schizophrenia is a brain disease that, at worst, deprives its victims of contact with reality. The positive symptoms of the disease include hallucinations, delusions and paranoia. The negative symptoms include difficulty in organizing thought or speech and in initiating goal-directed behaviour. The positive symptoms of the disease can usually be controlled through medication, which is a fundamental component in treating schizophrenia. Unfortunately, the disease deprives some people of the ability to recognize that they are ill and so leads to treatment refusals and much suffering and harm. We covered some of this in a paper that we presented to the government in May 1999 with the title *Enough is Enough*.

We congratulate the government on the thorough job it has done in consulting with interested parties and for its careful effort to provide balanced and fair amendments to the Mental Health Act. Brian's Law will make treatment available more quickly and reliably to severely ill people and will allow the community and hospital systems to better coordinate their efforts.

The bill's critics have alleged that it is an attempt to use coercion as a substitute for adequate community resources. We categorically reject this claim. The better use we make of our community resources, the fewer people we allow to deteriorate to the point of severe illness before intervening to assist them, the more resources will be available to provide better social supports for people with mental illness.

We have two specific recommendations regarding the proposed amendment. The first one: We recommend speedy crisis intervention. We recommend that the government further amend subsection 15(1) and related provisions of the Mental Health Act, so that clause 15(1)(c) of the act, "lack of competence to care for self," will include a new and distinct criteria, which reads "or has shown or is showing an apparent lack of capacity to make a decision with respect to admission to a psychiatric facility for treatment," and so that clause 15(1)(f) of the act, "serious physical impairment of the person" will include a new and distinct criteria "or serious disruption of ordinary mental functioning."

Families, and people with severe mental illness, have experienced first-hand the suffering that occurs when a person is allowed to deteriorate to such an extent that they are no longer able to make decisions for themselves. Mental deterioration must be recognized as a symptom of severe and persistent mental illness and included as a criterion for involuntary assessment.

This is a quote from a family member from northern Ontario in a letter to Minister Witmer, dated April 10 of this year:

"More representative of a person suffering from a severe mental illness is the person who is no threat to anyone, but suffers constantly. Typically, they are malnourished, lonely, living in constant anxiety or fear and unable to maintain a residency. They are sometimes taken advantage of or mistreated by others. They would benefit from treatment but will not agree to treatment. They have been hospitalized numerous times but relapse upon release....

"While never a threat to anyone else and only a threat to himself by neglect"—and this is a man in particular—"this man" lived in constant suffering."

The second change or amendment we'd like to see is greater protection from liability for the substitute decision-maker who consents to a plan and for family members who participate in the plan.

The issue of liability is of great concern for the members of the Schizophrenia Society of Ontario. The proposed legislation will expose the substitute deciders who consent to a treatment plan as part of an outpatient committal order, and the family members who participate in the treatment plan, to the risk of civil lawsuits. It is unfair to saddle family members, who already carry unusually heavy burdens, with the fear that a treatment plan gone awry could expose them to financial ruin. The legislation should make it easier, not harder, for relatives and friends of people with mental disorders to participate in their care.

I have another quote, this one from a mother of a son with schizophrenia living in the Golden Horseshoe. This letter was addressed to Minister Witmer on March 28 of this year:

"My son has never been hospitalized. I have taken care of him at home by myself. My son has never displayed violent behaviour toward others. He has always been self-destructive. I cannot describe the trauma of



finding your loved one ablaze in fire, or any one of the other terrifying events that finally result in the diagnosis of schizophrenia. I cannot describe the grief experienced by families who have a child, sister, brother etc diagnosed with schizophrenia.... Once we, their families, are gone, these invisible mentally ill will then become the very visible mentally ill as we are their lifelines."

I'd like to turn the presentation over to Janice.

**Ms Wiggins:** Does Brian's Law stigmatize or stereotype people with mental disorders? The existing law limits hospitalization to those who are dangerous to themselves or others. The new law permits intervention when a person is experiencing substantial mental or physical deterioration, that is, the old law fosters the stereotype that mental illness is linked to dangerousness. The new law counters the old stereotype by recognizing that people with serious mental illness are exposed to suffering and deterioration from which they can and should be spared. Untreated serious mental illness can sometimes lead to violence towards others, but more often it leads to horrible suffering in the person afflicted by the disorder. We need to ensure that people who are in need of medical treatment get it. SSO emphasizes that the community must look after the many, many more people with mental illness who are not dangerous, but who are ill and suffering.

The existing law requires that people be taken out of the community, that is, hospitalized, for treatment. The new law allows people to be treated in the community in the least intrusive environment. This will mean people with mental illness need no longer be excluded from the community merely because they require treatment, but will instead remain and function in the community, where they belong.

Often catastrophic events make headlines. Last December, a 47-year-old man with schizophrenia was set on fire near his Toronto apartment building. While police said the motive for the attack was robbery, neighbours said the man's condition had been deteriorating before the incident.

In a letter published in the *Globe and Mail*, our president, Ted Fielding, wrote, "This hate crime might not have happened if we had a Mental Health Act that recognized more than just bodily harm as a criteria for involuntary committal." SSO members, many of whom are with us today, ask how many more people have to commit suicide, how many more people have to be put in jail, how many more people have to suffer on the streets of Ontario or die, before laws designed to protect all people come into place? There have been many coroners' inquests that have dealt with these questions and solutions that must be implemented to prevent such tragedies from happening again.

1630

The fact is that some people with severe mental illness, when not taking medication, are more dangerous than other people. Most often they are a danger to themselves, not others; 10% commit suicide. Every time an untreated mentally ill person commits a crime like

killing a sportscaster, pushing someone in front of a subway train or attacking their next-door neighbour, that reinforces the public perception and the myths that spread to the majority who are not dangerous.

I'd also like to address the question of resources. Additional social resources, for example housing, income supports and so on, will not benefit people who are too sick to take advantage of them. A significant fact of schizophrenia is that people lack insight into their illness. Hence, people believe that they are not sick while at the same time suffering from awful consequences of this debilitating illness, including homelessness and suicide.

This law requires psychiatrists, hospitals and the community care sector to coordinate their efforts, which the current Mental Health Act does not do. Accountability for the provision of service to the severely mentally ill must be built into the system. It is unconscionable that any responsible community agency could or would refuse to provide access to treatment and supports for those who are severely mentally ill. Service providers must face an obligation to serve those people who may require more intensive care for longer-term response. It is not enough to only look after the worried well.

This law will allow us to open existing social resources—for example, supported housing—to people who are otherwise too sick to be safely admitted to them. Some of the mentally ill who are now homeless have been evicted from supported housing because of their psychotic behaviour. Provisions in the law will now ensure that people can live in the community.

This law will allow psychiatrists and hospitals to provide assistance to families, who are now the main resource in the community for serious mental illness. All too often, caregivers are family members who are aging and stricken by the effects of caring for someone who is mentally ill.

As we said earlier, we have brothers, mothers, wives, sisters and friends of persons who are ill in the audience today and they can tell you first-hand what it's like.

Caregivers are often left with nowhere else to turn in a crisis. Many of our volunteers across the province have experienced untold trauma in their homes. Many of them have informed us that they have sought help repeatedly but were unable to get it under the inadequacies of the current legislation. We often hear anguished parents asking who will care for their loved one when they are no longer able to do so. Siblings share concern for their brother or sister and look to the mental health system to provide some reassurance.

I'm quoting from a letter, from the mother of a man with schizophrenia who lives in the greater Toronto area, dated April 10, 2000. She says: "No home was meant to be a mental institution, but many are. If you have a son or daughter, sister or brother, mother or father with a severe mental illness your life is forever changed. You constantly worry when they are not with you and are in constant turmoil when they are at home. The pain of



watching someone you love living in a world of voices—you cannot explain it.”

Brian’s Law, a natural step in the development of Ontario’s mental health law: Ontario’s Mental Health Act, the Consent to Treatment Act, 1992, and the current Health Care Consent Act, 1996, have allowed people to be found incapable of consenting to their own treatment. Such people may, after having an opportunity to exercise their legal rights to resist the finding of mental incapacity, be treated on another person’s consent, and it’s usually the relative’s consent.

Brian’s Law is not about forcing treatment but rather about keeping people out of hospital. The issue raised by Brian’s Law, especially the new provisions of community treatment orders, is not about whether you treat but about where you treat.

I have another quote from a letter, dated March 29 this year, from the mother of a son with schizophrenia in Markham. She says: “The proposed legislation provides a ray of hope to families who are struggling to cope with a loved one stricken by this insidious disease, and I hope that our elected representatives will have the courage, compassion and determination to carry it through.”

Another individual in Scarborough, who is a wife and mother of persons with schizophrenia, wrote: “The heart-wrenching experiences families have had to go through because the act has been structured to allow people with schizophrenia to escape treatment when it is so obviously needed are no longer tenable in this day and age. I have experienced these hardships through my husband and my son who have been affected by this disorder. In both cases, they refused to take their medication and found themselves in a crisis situation involving the law and spending time in jail. This was totally inappropriate. Schizophrenia is a medical condition and must be recognized as such. Often it is necessary to remove such a person from society, but when this is the case, provisions must be found in the medical setting—a hospital, not a jail. These were very trying times for all the family who love them and were so powerless to effect treatment.”

A very simply put statement from a woman whose brother suffers from schizophrenia is, “Please help to open up the way to earlier interventions by changing the current legislation.”

In summary, SSO believes that the recent development of more effective medications with lower side effects, and new government initiatives such as the assertive community treatment teams, are improving life for many people disabled with schizophrenia. The passage of Brian’s Law will make these opportunities available to more sick people and increase the hope we see for the thousands of lives that have been affected by severe and persistent mental illness.

I want to thank the committee for their attention to our deputation today. Certainly, we’re available for questions.

**The Vice-Chair:** Thank you very much. We have about four minutes per caucus for questions. We’ll begin with the official opposition.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Thank you. I very much appreciated your presentation. I know how important it is to you to be here today and to make this presentation to the committee.

I just want to ask you a question specifically about the first amendment you proposed, because that’s an area where there are already significant amendments proposed to the current act. Can you explain to me what you think is missing from the proposed amendment in Brian’s Law and how your amendment would make a significant difference?

**Mr Fielding:** The proposed amendment, which I presume is section 15(1), talks primarily of bodily harm as one of the criteria for involuntary commitment, and is also one of the three items in that section that talks of lack of competence to care for self. We find that is a bit too narrow. There are a lot of people who are extremely ill and are not a danger to themselves or anyone else and obviously need treatment. What we would like to do is expand that lack of competence to care for self to include “or has shown or is showing an apparent lack of capacity to make a decision with respect to admission to a psychiatric facility for treatment.”

We get many calls from parents who are desperate to get their loved ones into treatment but can’t because they don’t meet the “dangerous” criteria or just the “lack of competence” one.

**Mrs McLeod:** That’s where my question comes in. Obviously, removing “from imminent harm,” which is in my colleague’s original bill, is an important part of that. But it does go on to say, in addition to the bodily harm, “or substantial mental or physical deterioration of the person.” I just thought that was fairly similar to what you were proposing as an amendment. That’s why I was trying to get a sense, because it does suggest in the government’s bill that it would be mental deterioration, not just physical harm.

**Mr Fielding:** Yes, but that’s after the first episode, the way the amendment to the bill is currently written. What we’re talking about is a situation where you have a first episode in the illness, which is this subsection (1). The new subsection that the government has added is (1.1), which is, if previously treated, this is what you look for.

**Mrs McLeod:** A last thing: You make a point in your very well organized brief of saying that this is not about coercion and it’s not about force. The images that are put forward are often of somebody being physically forced to take their medication. What response would you give to that?

**Mr Fielding:** We have a Health Care Consent Act that says that treatment can only be offered to someone who will accept the treatment. If that person does not have the capacity to understand what is involved with the treatment, then the law provides for a substitute decision-maker who can make that decision. If the decision is to treat that person, that person still has the right to appeal



to the Consent and Capacity Review Board if they don't like that particular decision. We support that; we always have. People have a right to oppose that if they wish.

1640

**The Vice-Chair:** One quick question, Mr Patten.

**Mr Richard Patten (Ottawa Centre):** Actually I just want to make a comment. I know that for many years you've worked diligently, patiently and with great vigour representing a lot of families in this province who truly have gone through very difficult times and people who have not been able to receive treatment. I just want to personally congratulate you on that and I am pleased to see you here today. Thank you.

**Ms Frances Lankin (Beaches-East York):** Let me add my words of welcome to you and also to Ruth Molloy and a number of people from the East York Schizophrenia Society who are all here in the row. I welcome them. I had the opportunity to meet with them and it was very helpful to me as a member of the Legislature in dealing with this bill.

I have a quick comment and then a couple of questions. I wanted to indicate that I really support the point you made about family liability and protection from liability. I have a bit of concern about the breadth of protection from liability that already exists in the act, that there is no one who has any responsibility, and yet under current law there are professional responsibility and accountability mechanisms. So I want to understand from experts how those provisions interact with that. But I completely agree that it is wrong that the family be left with the liability. We need to have the families involved without that threat.

One of the points that I think a lot of people have made is that for this bill to be successful the access to the treatment facilities and resources in the community have got to be there. There was a previous law in this province, the Long-Term Care Act, which is no longer in effect because we've gone a different route in terms of how we organize those services, but contained in that was a list of minimum mandatory services that had to be made available in all regions of the province. I've been talking to people, proposing to bring forward an amendment of that sort to this bill, because for the community treatment order, which has a provision that says it will only happen if those services are available in the community, to be successful and to have a positive intervention in people's lives, we need to ensure the services. I'm wondering if you could comment on whether that's something you might, in general terms, be supportive of as an organization.

**Mr Fielding:** Definitely. Obviously we need the services to make this law work. I'm not a lawyer so I don't know whether this can be done through regulations after this law is proclaimed. We recognize that this thing won't work unless you have those supports and we would certainly advocate for that if it doesn't happen, you can rest assured.

**Ms Lankin:** Stay tuned for my amendment then.

The other thing that I would like to propose to you, in some jurisdictions governments have created an office called a mental health advocate's office. Here in Ontario we have a child advocate's office, we have an Environmental Commissioner, an Ombudsman and a number of things. The mandate of such an office would be to review what's happening in this field, the way in which there is coordination or lack of coordination between psychiatric facility-based, institutional-based services, community-based services and law services dealing with persons with mental disorders.

I again have talked to some people and am interested in proposing the creation of such an advocate's office, because one of the things we need to do is monitor the implementation of this legislation and ensure that it is reaching the collective goals that have been expressed by people who even have opposing views about the details. Is that something in general that you have ever looked at or that you might be supportive of?

**Ms Wiggins:** That is something we have considered but maybe not under that specific title of advocate's office. But I think you raise a very good point in recognizing that there are many components to mental health and many components to the law that need to be implemented. To have a quasi-independent body available to all of us, in the community in particular and speaking on behalf of the families, yes, if there is a number that you can call or there's an office that is going to be able to respond is up for discussion. I can't comment on specifics of it because we haven't seen the proposal, but certainly on the general side.

**Ms Lankin:** The last thing I want to put forward is the concept of requiring a reporting mechanism. a community treatment order can't be implemented because services are not available in the community or people are unwilling to provide the services—you referenced that—that there is triggered a reporting mechanism back to the ministry and the Legislature so we can keep track of that and it allows us to examine what we need to do as government to implement greater resources. That's another general idea I'm interested in if you think that might be useful.

**Ms Wiggins:** I would suggest that, yes, that would be a useful mechanism to ensure that the accountability is there in the system. I think what we're emphasizing is that the system must be held accountable.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** I want to thank Ms Wiggins and Mr Fielding for testifying. You can appreciate that this standing committee is going to hear some divergent perspectives on this issue with respect to very serious mental health issues. There are different opinions as far as the causes and certainly different opinions with respect to solutions.

Earlier we had a question making reference to your statement that Brian's Law is not about forcing treatment but rather about keeping people out of the hospital. As I understand it, a community treatment order defines conditions under which a person with a serious mental illness may live in the community and, failing to follow



an order, is returned to a psychiatric facility. But the return, as I understand it, is for assessment, not hospitalization. That's my understanding of these community treatment orders.

I wished to ask you a question. In much of your presentation you present evidence of support for community treatment orders, specifically in this case for people with schizophrenia. I wondered if you could be more specific. Could you give us some specific examples of ways in which community treatment orders can benefit people with schizophrenia?

**Mr Fielding:** The whole concept of community treatment orders is to prevent this revolving-door situation that occurs with people who are the most severely ill. If you can keep people in the community on community treatment orders, it then frees up beds that now are being occupied by those people on a repeat basis. It's a much more efficient use of the services available for mental health.

**Mr Clark:** I want to thank you again for coming out and participating in the consultations.

During the first round of the consultations we heard from a number of different parties that they believed the Mental Health Act was fine as it was written and that it was simply a question of education; if we educated the public, if we educated health care providers, the Mental Health Act was sufficient as it is currently written. Would you care to comment on that position?

**Mr Fielding:** Actually, we've said in our paper that we just presented that the current Mental Health Act, which is centred very much around bodily harm, really perpetuates the stigma attached to mental illness that all people with mental illness are potentially dangerous. We know very well that they aren't. The majority are not dangerous. That is one thing we don't like about the current Mental Health Act.

The second is that it waits for you to descend to a level of illness where you might be dangerous or you might be dangerous to yourself, and we don't believe that people should be allowed to reach that level of suffering. We don't do that for people who are suffering from cancer, for example. We start treatment as soon as we discover that they have cancer. This act allows people to just keep sliding down until the inevitable happens.

We're faced with that all the time at the schizophrenia society, where I get a call from a mother saying, "My son is very ill," and I say, "Does he meet these criteria in the act?" She says, "No, but he's very ill," and I say, "I'm sorry, but there's nothing we can do; you're going to have to wait till he does something."

**Mr Clark:** That being said, if we're successful in amending the act, what would your position be about public education at that point?

**Mr Fielding:** I think it's very important, and it should continue. Only with education can you deal with the perception of the stigma attached to mental illness. It's time we recognized it for what it is: just an illness.

**The Vice-Chair:** Thank you very much for being here today and providing us with this presentation. We're ready to move on to our next presenters.

1650

## ONTARIO MEDICAL ASSOCIATION

**The Chair (Mr Steve Gilchrist):** Good afternoon. I wonder if we could get you to introduce yourselves for the record, please.

**Dr Albert Schumacher:** I am Albert Schumacher, a family physician and president-elect of the Ontario Medical Association.

**Dr Stephen Connell:** I am Stephen Connell, a psychiatrist and chair of the Ontario Medical Association section on psychiatry.

**Dr Brian Hoffman:** I am Dr Brian Hoffman, chief of psychiatry at North York General Hospital.

**Ms Barb LeBlanc:** Barb LeBlanc, staff at the Ontario Medical Association.

**The Chair:** As you know, you have 30 minutes for your presentation. Please proceed.

**Dr Schumacher:** Thank you to the committee for allowing the Ontario Medical Association to present our views on Brian's Law before you today.

As a family physician in Windsor, which is underserved for psychiatry, family physicians like me are the primary providers of mental health services for many patients. We need the legislative changes that will help us provide better care for people with serious mental disorders. It is positive to see that there will be an enhanced ability for psychiatrists to work with family physicians and others in the community to tailor comprehensive treatment plans for each patient who is deemed to be suitable for either early release from hospital or hospital diversion entirely through community treatment orders.

In addition to our oral presentation, we have provided more detailed comments on each of the subject areas we intend to cover in our remarks. We hope this allows us to keep our presentation succinct and provide time for dialogue in areas that require further exploration. We also want to give you the proposals and the rationale behind them.

We plan to address four main issues with you this afternoon: first, the criteria for involuntary assessment and admission; second, community treatment orders; third, leaves of absence; and finally, accountability and liability.

I'll now turn the presentation over to my psychiatrist colleagues, who have been more closely involved than I with the legislative amendment process thus far. But before doing so, I would like to thank the government for adopting a number of the recommendations from our report in December 1999 and subsequent consultations.

**Dr Connell:** The Ontario Medical Association section on psychiatry has been working closely with the Ontario Psychiatric Association for about a year in order to press for amendments to the Mental Health Act that would help bring our legislative infrastructure in line with mental



health reform, provincial psychiatric hospital divestment and patients' treatment needs. We are pleased to see that the legislation moves to decriminalize persons with mental illness by moving away from a strict "dangerousness" criterion for involuntary admission and care, at least in the case of patients with a lengthy psychiatric history. We believe the introduction of the new assessment and admission criterion, which acknowledges physical or mental deterioration, is an important step forward in ensuring that people get help before they reach a crisis point. This, in turn, will help to destigmatize mental illness.

We feel it would be clinically useful for the act to extend these non-bodily harms beyond the chronic population described in subsection 15(1). We recommend that clause 15(1)(f) of Brian's Law be amended to refer to serious physical or mental impairment of the person.

**Dr Hoffman:** As a psychiatrist in a hospital setting, I am constantly challenged to use the shrinking number of in-patient psychiatric beds more efficiently and to explore ways of facilitating outpatient treatment and ongoing community living. This is especially important with the downsizing of Queen Street and Whitby, where we now expect patients with chronic and cyclical illnesses to live in the community. I believe the introduction of community treatment orders will help us accomplish both of these goals, and I thank the government for including them in Brian's Law. As always, though, the devil is in the details, and I have some practical concerns about how I as a physician would implement CTOs.

Since we prepared our original brief in December 1999, we have spent a significant amount of time refining our model based on information obtained from other jurisdictions and extensive discussions around clinical need. No doubt, community treatment orders are useful for revolving-door and chronic patients. However, we now want to put forward the argument that CTOs could be effectively used for a more acute clinical population than we previously estimated. We continue to recognize that community treatment orders will be appropriate for a relatively limited number of people. Most people will continue their outpatient treatment voluntarily. But we believe their use should be actively encouraged as a least restrictive treatment option for patients who meet the involuntary hospital criteria, regardless of previous psychiatric history.

**Dr Connell:** Many people don't realize that our existing legislation already has a provision in it for a time-limited leave of absence from hospital, with a planned return. The OMA has examined this provision closely and believes it would be much more effective if it were modified to remove the existing requirement for a planned return, thus allowing a step-down system from in-patient treatment to supervised outpatient treatment prior to full discharge from the hospital. So we're talking about a transitional phase.

The OMA recommends that subsection 27(1) of the Mental Health Act be amended to remove the

requirement that the patient be expected to return to the hospital. This is consistent with our encouraging moves to treatment based in the community.

**Dr Hoffman:** The final major area we would like to talk about today is accountability and liability. I want to go back to Stephen's point about community treatment orders. There is a pet peeve in that legislation why it will not be used in a general hospital under existing legislation, and that's because it requires the signature of the officer in charge of the psychiatric facility. That is not a doctor or a psychiatrist; it's the president and CEO of the hospital. You might get that person in a psychiatric hospital to sign, but in a general hospital—North York General is close to a \$200-million operation. Throughout Brian's Law those duties assigned to the CEO are not delegable, and a lawyer will point that out. So I would ask for the repeated amendment that wherever you have "officer in charge of a psychiatric facility," you put "officer in charge of a psychiatric facility or delegate." The CEO would delegate that to me, and I could then implement things. The accountability would still go back to the officer in charge. It's a very simple thing, but it's one of the reasons why leaves of absence are rarely used in a general hospital.

As Dr Connell noted, the existing Mental Health Act has a leave-of-absence provision which allows a patient to live for a period of time in the community as long as he or she adheres to the conditions of the leave. Unfortunately, some of my colleagues in community hospitals are wary of using those leaves because of concerns about legal liability. It is interesting to note that many of my colleagues in the provincial psychiatric hospitals are less worried about this, and I suspect the reason lies in the fact that the act indemnifies hospitals and their employees from liability for any torts committed by their patients. Psychiatric hospital psychiatrists are employed directly by the provincial government, and therefore are also protected from liability in this regard.

Community hospital psychiatrists are not employees of the hospital in which they work, and therefore do not enjoy the same protection. In order to support community-based, team-oriented care, government should provide a medical-legal climate that encourages the use of leaves, community treatment orders and other least-restrictive alternatives to involuntary, in-patient hospitalization.

The OMA also believes that the accountability and liability provisions in the community treatment order section of Brian's Law are incomplete, as they only talk about physicians and other regulated health professionals but do not extend to community-based care providers. The OMA suggests that the provisions be expanded to include all persons who are involved in the treatment, care or supervision provided to a patient under a community treatment plan.

1700

**Dr Schumacher:** The OMA sees great potential for the amendments introduced by the government to the Mental Health Act to significantly improve our ability to provide more timely care and better follow-up care to



persons with serious mental disorders. We support the major thrust of the government's amendments but have some specific suggestions for changes that will make the legislation more practicable in the field.

We hope you will read our detailed suggestions and give them your active attention.

Thank you for your attention to our presentation. We'll be pleased to use the remaining time to answer any questions you may have.

**The Chair:** Thank you, Dr Schumacher. I appreciate your comments and the specific suggestions that are attached.

We have approximately five minutes per caucus for questioning. This time the rotation will start with the NDP, Ms Lankin.

**Ms Lankin:** I appreciate your presentation, and it's a pleasure to see all of you again.

I have three areas that I would like to explore with you, and anyone can respond. But the first, perhaps, is directed to Dr Hoffman.

I have spoken to heads of psychiatry departments in a number of general hospitals. One of the concerns I hear, entirely off the record—and I didn't hear it presented here today, so I want to see if this is a concern we can put on the record—is the broadening of criteria for involuntary committal. If we experience, as we have in other jurisdictions, that CTOs are applied to a relatively small proportion of the patient population, with the scaling back of provincial psychiatric hospitals, I've heard a concern about what is going to be happening in our emergency rooms and the ability and capacity of our institutional psychiatric resources to meet the need and the demands that will be created.

In particular, I note that we have a number of recommendations from the hospital restructuring commission that were based on number crunching done at a time when the law was different than it will be, and that we may see a very different effect as a result of these amendments. Has the OMA given thought to this? Do you have any comments on that, Dr Hoffman or Dr Connell?

**Dr Connell:** There is a lot of concern with change at many different levels with legislation in this area.

In terms of resources, what we do know, and I think it was pointed out by the Schizophrenia Society, is that bed usage is going to drop down. So you are going to have those beds, which are already shrunk in the system, available for other patients, because these revolving-door patients will hopefully be maintained in the community.

In a study in Iowa which we have the use of in-patient beds was reduced by 86%, and visits to the emergency department for the chronic community treatment order population were reduced by half. This has been replicated elsewhere. This sort of legislation is present in 40 US states, as well as in other jurisdictions in Canada, so we have quite a body of literature that is building to show that it is quite effective in reducing the demand on the bed system and on the emergency department.

If you have a treatment plan, the legislation and treatment resources in the community, that treatment

team is going to be on top of that patient, making sure that if there is any deterioration they're not going to have to go to the emergency department. If a GP or a family member is concerned about that patient, they will be in touch with a designated member of a treatment team. So it really puts a system of care, a hospital without walls, in the community, which I think is a humane and progressive way of treating this population, who until now have been at the mercy of shrinking resources. I think it ensures that a treatment plan is going to be available.

**Ms Lankin:** So you actually think there won't be a requirement to add additional institutional beds at this point in time?

**Dr Connell:** Not institutional beds, but I think what we may have with other aspects of the act is the ability to capture a population that hitherto did not receive treatment. These are people who were deteriorating and don't go to doctors' offices but whose family members were powerless to take anywhere. If those patients are deteriorating at home or are students at a university and going downhill, manic and deteriorating, those individuals could now be taken to an emergency department.

I think this is where some of these chiefs of psychiatry may fear they are suddenly going to get all these previously undiagnosed and untreated patients deluging the emergency department. We'll have to wait and see whether that is going to be the case. But working with the government on the next phase, which is the regulations, we can try to anticipate areas of resourcing, based on the literature, that might be needed.

**Ms Lankin:** I have two questions, but I'll go to the more important one that I want to address.

In the rationale for your amendments to community treatment orders, you talk about the fact that after considerable study from the consultation period, you have determined that CTOs, which are for persons who meet the involuntary admission criteria—in fact, you are looking at broadening this in some ways, because it is a less restrictive alternative.

One thing I am concerned about, and I'm not sure if this is a legitimate concern, but when I read that section, the individual has to meet the criteria for an assessment for involuntary committal, not involuntary committal criteria. In order for me to get my head around this, to see a CTO as a less restrictive option, I feel like the individual should at the very least meet the criteria for having been assessed for involuntary committal. That seems to be what you say the law does. But when I read it, it does something slightly different. Did you give any consideration to the form 1 versus the form 3 criteria in the way this section is written?

**Dr Hoffman:** Yes. I want to make the argument that by opening the front door, CTOs open the back door, so there should not be any need for increased beds. The form 3 criteria are actually quite different in that you do not need current evidence. It's simply the opinion that the person will run into harm. The form 1 requires evidence, A, B, or C—has threatened or is behaving in a way that's dangerous. So I think it's important for CTOs that you



have an evidentiary-based opinion. The form 3 does not require that, because once the person is in hospital, they're no longer threatening their father or starving themselves, because the nurses are feeding them.

**Ms Lankin:** But they are receiving a psychiatric assessment as to whether or not they're a candidate. Presumably some people are assessed, and it is determined that they're not candidates for involuntary commitment. So for a CTO to be left restrictive, I'm having a problem making a circle around that square.

**The Chair:** I'm afraid we are going to have to move on. We have about seven minutes.

**Mr Clark:** I'm interested in your comments about liability for physicians and psychiatrists. In section 33.6 of the proposed act, there are three subsections. The first deals specifically with physicians who issue community treatment orders, and it states pretty clearly "the physician is not liable for any default or neglect by those persons in providing treatment."

The next subsection deals specifically with the people who are involved with the community treatment order themselves, the other health care providers. It seems to me, in reading the three subsections, that the act pretty well indemnifies psychiatrists and physicians, as well as health care providers, if they are providing treatment based on the requirements set out by the physician or psychiatrist who issued the community treatment order. So I'm a little confused in terms of where you are coming from in stating that we're not providing enough indemnification.

1710

**Ms LeBlanc:** Specifically, we're looking at the word "treatment," because not everyone who is involved in the care plan will be actually providing treatment. Some will be providing supervision; some will be providing care. Treatment, when you start to look at it, can only be provided by regulated health care professionals. It's a bit of a picky question, but it's really just for the sake of completeness. We want everyone to be in. We want everyone who is part of the community care team to be indemnified.

**Mr Clark:** Arguably the line states "If a person who is responsible for providing an aspect of treatment under a community treatment plan." You don't feel comfortable that it states "an aspect of treatment under a community treatment plan"? I view that as covering it off, but I don't know. I'm not a lawyer.

**Ms LeBlanc:** The definition of "treatment" under the Health Care Consent Act is quite broad, but we just want to make sure that it is crystal clear that all aspects, including the supervision—because that isn't in there necessarily—and the ancillary care are captured.

**The Chair:** Mr Barrett, fairly quickly.

**Mr Barrett:** A quick question. You raise the issue of concern of an administrator releasing a psychiatric patient from a hospital. My understanding is that much of the thrust of these orders, which are issued by medical practitioners, is to keep people out of the hospitals. This is something we heard in the previous presentation. How

realistic is that statement? How realistic are these community treatment orders, to be designed to assist people to remain in the community, and failing that, they go to the hospital for assessment? How realistic is that approach in the real world?

**Dr Connell:** I can only refer back to the response I gave to Francis Lankin, and that is, the studies we have, for example, in New York showed that the people on the orders had 44 days of hospitalization over an 11-month period; people without the orders were I think 101 days. So you're getting dramatic differences in the use of the hospital and the need for hospitalization. In fact, that's the one clear, resounding piece of research outcome on the community treatment orders as they've been applied elsewhere. We're encouraged by that.

The only other proviso about the treatment orders is that they must be combined with treatment in the community. You can't just put a person on an order without treatment. It's not enough just for housing or vocational rehabilitation—as some of the critics have said, "We don't need CTOs; we just need housing." That's not what the research is showing us. The research is showing us that you must have the person getting their faculties together so then they can determine what the best for them is in their rehabilitation. The only way you can do that is have intensive outpatient treatment services available to them.

The cost of outpatient treatment services is a fraction of in-patient services. If it's \$600 or \$1,000 a day for in-patient services, it's only going to be \$10,000 a year for the outpatient, so you just need 10 days of hospitalization to pay for that person's entire year of outpatient services. In the Iowa study, if you had 2,000 people on CTOs for a year, you would save \$34 million. That's taking into account the cost of the medication and the cost of the outpatient services. If they use 26 days less hospitalization per year, when you don't have that being spent, you're saving \$34 million a year for 2,000 people on CTOs. So just from a cost basis, in terms of better using our health dollars, it makes a lot of sense.

**Mr Patten:** Very quickly, Dr Connell, I wonder if you might share with the committee a synthesis of some of these studies that you've referred to, especially the Iowa case.

**Dr Connell:** Fortunately, there is a foundation in the States called the Stanley Foundation. This is a family—I don't know if it's Stanley Tools—who have a lot of money and they put \$400 million into this foundation. They have a Web site. I believe a lot of these studies are on the Web site. John Stanley sent these up to me by courier yesterday. He sent me up a number of them and we'll pass that on to you.

**Mr Patten:** Thank you. One other point, and it had to do also with the liability question. I would take that almost as a friendly amendment, Barb, when you talked about the aspect of treatment. As I read the legislation, the intent is that there will be a treatment plan that may have a number of players in it, and some of those players may not be "treating" the individual—they may be



supporting in other fashions—but they do have a role and they have a responsibility. I think that was the intent. However, a friendly amendment might be able to clarify that, because it is a good point. Go ahead.

**Mrs McLeod:** In previous briefs that the OMA has made on the issue of changes to the Mental Health Act, one of the suggestions you'd made quite strongly was that there be a redefinition of "mental disorder" from the current act, wherein the current act it says "'mental disorder' means any disease or disability of the mind."

I don't have your proposed redefinition in front of me, but it seemed to me to be an important qualification that what we're talking about here is mental illness and not something as broadly defined as the current act is. Is that still a recommendation that you would make for amendment?

**Ms LeBlanc:** It's certainly one that we still believe in. We haven't pushed it forward today. We really did want to focus on what's in Brian's Law as opposed to bringing too many new concepts to the table.

**Mrs McLeod:** I appreciate that, although after many, many years we may not often be looking at changes to the Mental Health Act.

**Ms LeBlanc:** Understood.

**Mrs McLeod:** I guess my basic question is, given the current status of community treatment resources and the fact that Dr Musgrave has said that we need three times the number of ACTT teams that we currently have to be able to make community treatment orders work, I'm wondering practically whether you think these are going to be frequently used. I recognize that in the bill it's very clear that you cannot have a community treatment order without being able to provide the community treatment.

**Dr Hoffman:** Could I tackle that from a general hospital point of view? I am concerned about resources, not about beds. We're not used, at this point in time, to dealing with families and community resources on an in-patient unit to the degree that these acts imply. So I'm short on two kinds of staff on an in-patient unit to implement community treatment orders, one a psychiatrist—only 40% are attached to a hospital—and the second is social workers. I have 1.4 social workers on a 30-bed ward and it wouldn't take very many seriously ill people where I need a community treatment order to gobble up all the time. These are costly professionals. So that will have to be solved.

The community services: We've never been so rich—some of the changes that have come in in the last two years in this province—ACTT teams; not just ACTT teams, but ACTT teams attached to general hospitals under the authority of general hospitals. ACTT teams were designed in the States not attached to hospitals, and this gives us a tremendous right to access their resources and to coordinate care. As well, crisis teams, court diversion workers, and this week's announcements about increased sessional fees on psychiatric wards and increased on-call fees will help us to attract psychiatrists to work in these areas. In addition, the government has

allocated significant millions of dollars to housing for these groups.

This is timely. Community treatment orders would not work without these community resources in play and this is an appropriate time. In fact, without community treatment orders some of these other resources won't be utilized, such as ACTT teams; they'll be immobilized.

**Dr Connell:** Mr Chair, could I just follow up on that, quickly? I think that's a misquote from Dr Musgrave, but he's going to be before the committee. I know you mentioned that in the House and we gave him a call. He's a strong advocate for the ACTT teams but I think he'll clarify for you what his thinking is about the two going together.

**Mrs McLeod:** It's evidently in a letter to Mr Clark.

**The Chair:** Thank you very much for coming forward. I don't know if it's been said here this afternoon, but this is only the second piece of legislation where we've gone to hearings after first reading. Mr Patten commented about friendly amendments. In fact, the bill is not really crystallized at all, and our hope from all three parties is that we have an opportunity to hear presentations such as yours and distill those down into changes to the bill, before taking the relatively hardened positions that seem to be more the norm in second and third readings. So we very much appreciate all those coming forward at this time.

1720

#### COMMUNITY ADVISORY COMMITTEE OF THE ST JOSEPH'S MENTAL HEALTH PROGRAMS

**The Chair:** I call our next group forward, the community advisory committee of the St Joseph's mental health programs.

Good afternoon to you both. Thank you for your indulgence. With the House proceedings, we're a little delayed today and we appreciate your accommodating that.

For the purposes of Hansard, I wonder if you would be kind enough to introduce yourselves. We have 20 minutes for your presentation.

**Mr Terry Burrell:** Thank you. My name is Terry Burrell.

**Ms Margaret Van Dijk:** My name is Margaret Van Dijk.

**The Chair:** Thank you. Please proceed.

**Mr Burrell:** Good afternoon, members of the Legislature. Thank you very much for permitting us to come before you to make our presentation today.

We're members of the community advisory committee of the mental health programs at the St Joseph's Health Centre. St Joseph's Health Centre, which was previously known as St Joseph's Hospital, is located at 30 The Queensway in Toronto. It's at the corner of Sunnyside and The Queensway in the Parkdale-High Park area in west Toronto.



Bill 68 is about mandating treatment in the stated interests of public safety. St Joseph's Centre's mission includes the provision of competent and compassionate care to our community. I should just note at this stage that during my presentation I'll be using "treatment" and "care" interchangeably. They mean basically the same thing. I'm not using a narrow definition for treatment and a broader one for care.

St Joseph's mission has also always emphasized providing care to the poor and the disadvantaged. When our advisory committee looked at the bill, we focused on the impact of the bill on our mandate because, in large part, we think that if a bill like this helps an institution like ours, then it's likely to be able to help the community at large. We pose the question: Will the bill help us or will it hinder us in our mandate of providing competent and compassionate care to our community? Will it help us provide care to the poor and the disadvantaged? Will our community be better off and will the public be safer as a result?

There are two principal mandated treatments in the bill which have a direct impact on St Joseph's. The first is the community treatment order, which mandates the kind of treatment that would otherwise have taken place in a hospital like ours, to have that treatment take place in the community. So we have a movement of treatment that would otherwise have taken place in the hospital out into the community.

The second mandated treatment that the bill presents is by way of broadening the criteria under which a person can be involuntarily committed to hospital for treatment. What it does is mandate more treatment in the hospital.

In considering the impacts on our facility, we have to look at the context in which St Joe's has been operating. First of all, the community itself that we serve includes South Parkdale. South Parkdale has a large number of people with extensive psychosocial needs and of course they tend to proportionately make up the highest users of our hospital services. We have in that community 17% of families living on low income. In some areas, over half of the residents live on social assistance. There has been an increase lately of 44% of single-parent families, an increase in the proportion of immigrants and a large number of people in the community who are in need of the services that the mental health program provides.

Parkdale neighbourhood has been the neighbourhood of choice for many long-term previous residents of both Queen Street Mental Health Centre and the former Lakeshore Psychiatric Hospital, so our hospital is in the area of Toronto that has perhaps the highest proportion of individuals at risk and vulnerable and that require substantial, on-going mental health care and support.

The other component of the context in which we have to look at the bill, apart from the nature of the community which we have traditionally served, is the impact of the changes in the health care system over the last period on our ability to meet the services that are demanded from us.

The first thing I'd like to note is that, as a result of the changes that have taken place, the nature of the demand that has been placed on our facility has changed markedly. The nature of the demand for mental health services in the St Joseph's Health Centre has increased significantly, in large part because of health care restructuring. Health care restructuring has decreased the number of beds that are available in Toronto as a whole for providing psychiatric services. There has been not just a decrease in the number of beds, but there has been a decrease in the number of beds that are available to people in the community at large. I'm not talking about just the St Joseph's community, but the community of Toronto. For example, at Queen Street there are fewer beds available, partially as a result of allocation to the provincial mandate that facility now has and partially as a result of the choice the broader institution has made to focus more on research and other tasks and away from treatment. So we have a decrease in the availability of alternative treatment facilities to St Joseph's, therefore an increase in the demand for our services.

St Joseph's has traditionally been very underfunded. Prior even to the health care restructuring, St Joseph's was identified as a facility that had a proportionally smaller availability of resources for its mandate than other facilities; for example, North York General. So we've had a major increase in the demand for our services and we've historically been underfunded. Recently we have had some increase in our funding, for which we are very grateful, but the increase in the funding, in our view, and just perceiving the demands on the hospital, hasn't really brought us back to where we should have been before restructuring and the allied impact increased the demand for our services. We feel that we continue to be struggling to provide the service we want to provide.

Does Bill 68 help us? Listening to the Ontario Medical Association, I think the major point they were making is that, in their view, a facility like St Joe's should be helped by the bill because it should free up hospital beds by diversion, primarily through the community treatment arm. If that takes place, of course, we will have more resources available in the hospital to do the kind of treatment that we'd like to do. But at this stage we're very skeptical that will actually take place. My reading—and I'm sure it isn't as deep or profound as the reading the Ontario Medical Association has done of the research—is much more ambiguous, that the results are not nearly as clear-cut in terms of the diversion of community treatment recipients from the hospitals and into the community.

At the same time, while it's not clear that there will be a clear diversion there, the expansion of the criteria by which admissions can be made to the hospital suggests that we will be getting admissions of people into the hospital that we wouldn't have been getting under the current regime, if only because the criteria are wider, broader, more expansive.

We're deeply concerned about the impact of the bill, were it to become law, on the resources available to our hospital to be able to do the job we're mandated to do.



We also have to look at the quality of care. We're mandated to provide care. If the bill comes through, the community treatment orders are implemented, and much more mandatory treatment takes place than currently takes place, is that the kind of care we would like to see? We're committed to compassionate care which is respectful of the person and the person's right to make decisions about their own health, as well as the treatment considering the possible negative impacts on the individual and others. It should be care which is respectful. It should be least-intrusive care. We don't see this in the bill now. We don't see any requirement that the treatment in the treatment orders is least intrusive.

Now, listening again to the Ontario Medical Association, it's almost by definition that if you're treating in the community, that's less intrusive or least intrusive. That's not necessarily true at all. In fact, it may have more intrusive care, more medication of the sort that will make a person tractable in the community than would be administered in a hospital, were the person in the hospital for care.

1730

We have to look very closely at two things. Does community care necessarily mean it's less intrusive? Not necessarily, and here we get into the resources that would be devoted to care in the community. But we also have to look at the legislative regime and whether the legislative regime itself mandates or requires the care and the plan to be least intrusive.

Of course there are the rights of the patient that are implied by the compassionate and least-intrusive care that we're very concerned about. An expansion of the ability to treat involuntarily is something that all of us have to be concerned about. We're deeply skeptical that this bill will provide care which does respect the rights of the individual.

We're also concerned that the bill will result in a diversion of two kinds of resources. The first kind of diversion we're concerned about is a dollar resource diversion into care that may well be inferior; care that's inferior because it's care under a community treatment order that's underfunded. In our view, that takes resources that are inadequately provided into a form of care that may well be inferior, resources that could have been used better in forms of care that are better established, in a hospital setting or elsewhere.

We're also concerned about diversion of dollar resources by the government to protect the legislation. This legislation is quite controversial and almost undoubtedly will be the subject of legal challenges, charter challenges, because of the intrusive aspect. Is that kind of activity worth what the bill is offering us in terms of potential impacts? We ask you to consider that. We think an enormous number of resources may be diverted into that.

There also may be a diversion into the kind of care—and this goes back to the first point I was making about diversions—that is inferior because it's devoted to the use of the new powers, because members of the profession are under pressure to use the new authority, to use

the new pressure, even perhaps against their better judgment, because of the pressure from families and others.

Finally, we're concerned about the diversion of political resources. The profile of the bill gives us the following kind of concern: If this bill becomes law, we're concerned that passing the bill will somehow convince the Legislative Assembly and the public at large that the mental health agenda has been addressed and addressed adequately. We think that is a significant diversion of political resources away from this issue. We don't think the bill, as it stands now, does address comprehensively the needs we feel in our community. We don't think the bill intends to do that or purports to do that, but by gathering the kind of attention it has and diverting political capital in that direction, we're concerned that the mental health agenda will be shoved to the side, left, and the government and others will move on.

That's the substance of my presentation. Margaret Van Dijk is going to go from the general concerns we have to talk about our mission, our mandate, in the context of how the bill might effect—and this is a hypothetical—someone who is a member of our community, someone we have the mandate to treat.

**The Chair:** I should alert you that you've got about four minutes left for your presentation.

**Ms Van Dijk:** My concerns are, as we said, about the safety of the community as well as the well-being of the mentally ill. We have a hypothetical patient, Joe. Imagine Joe. Joe is a Canadian. He lives in Parkdale. Joe has a history of schizophrenia. He has paranoid delusions. He believes he's a target for Mafia hit men. But he's not violent. He needs drugs, but he doesn't like taking them because of their side effects. When he went off his medications in the past, he was always hospitalized and stabilized.

Joe has heard of community treatment orders. His perception of them is that a CTO will punish him for his illness. He knows he's at risk of having one issued against him. That's why Joe now stays at home in a shared room in a Parkdale rooming house, watching TV all day, not eating properly, not taking care of himself, gaining weight. He never goes out. He knows his behaviour scares people. He grunts. His tongue clicks. His body language and disorganized speech is scary for people who don't know him.

The current lack of beds and resources would mean that Joe is at risk of having a community treatment order issued against him. The mandatory nature of this order terrifies him and so do the nauseating side effects of the injections imposed by the order. So terrified is Joe of having the CTO issued against him, of losing his benefits, his drug card, his room and any semblance of freedom that he has gone underground, that he stays in hiding in a cramped and messy room in Parkdale.

Joe is in fact suffering more and more. He's daily becoming more dangerous to himself and others. As you heard, 10% of young male schizophrenics commit suicide. What will happen to Joe? He's becoming quite detached from reality.



What does Joe need? What's appropriate for him? We'd like to see more support: support like specialised residential housing; a caring institution where he can reside in moments of crisis; a caring and trustworthy relationship with his physician and health care providers, the ones involved in direct clinical care—his attending physician, not just any physician. We'd like Joe to have access to the latest medications that do not give him disturbing side effects. We'd like assurance that in a crisis he'll have his rights read to him within 12 hours. We'd like him to have the right to the second opinion of a psychiatrist. We'd like him to have assurance that he's not going to be cut off his drug card, his benefits, his income support. We'd like him to have confidence that his drug record will be seen only by health professionals and with his full consent, unlike section 16 of Bill 68. We'd like him to have confidence that he'll get support without a CTO.

Bill 68 does not offer Joe these supports, so what can he do and where can he go? We know that St Joseph's hospital is stretched to the limit already. We heard the OMA mention they have 1.4 social workers to a ward in their hospitals. So where will Joe go?

In conclusion, on behalf of St Joseph's mental health programs and especially on behalf of the community St Joe's serves, we ask you to seriously consider this bill and its implications for our community, consider more carefully the possible misuses the bill could lead to, think about the lack of security for the community that will still exist due to the lack of institutions and services for the seriously mentally ill. We'd like you to offer more support systems to contribute to a sense of safety in the community.

As it stands, Bill 68 shows a lack of respect for people's fundamental rights and freedoms, and it jeopardizes the compassionate care which is so evidently what the mentally ill need and their physicians want to provide. We think the seriously mentally ill deserve a closer look at Bill 68, and we think our community's safety deserves a more thoughtful approach to this issue. Thank you for your attention.

**The Chair:** Thank you very much. You've timed it perfectly. That was your 20 minutes. We very much appreciate your taking the time to come down and share your views with the committee today.

**Ms Lankin:** Mr Chair, I was just wondering if you could instruct us with respect to the rest of the day's agenda. I'm very keen to hear both of these presenters. In fact, I have a terrible conflict post 6 o'clock. Have you made arrangements?

**The Chair:** I'm led to believe that the folks from the Mental Health Legal Committee have very graciously agreed to allow themselves to be rescheduled.

**Ms Lankin:** Terrific. Thank you.

**The Chair:** We are in their debt and certainly we'll be very accommodating for the rescheduling. That means we should only be a few minutes past 6 o'clock.

1740

## ONTARIO HOMES FOR SPECIAL CARE ASSOCIATION

**The Chair:** The next presentation will be from the Ontario Homes for Special Care Association. Could their representatives come forward, please. Good afternoon. Welcome to the committee. Just a reminder that we have about 30 minutes for your presentation, barring any votes back in the Legislative Assembly. Perhaps for the purpose of Hansard you could introduce yourselves.

**Mr Brad Rye:** Good afternoon and thank you for this. We're from the Ontario Homes for Special Care Association. This is our president, Mike Dowdall. This is the secretary-treasurer, Connie Evans, and I'm the vice-president, Brad Rye. We'd just like to go through the first page of our handout so that you know who we represent.

The present Ontario Homes for Special Care Association is a non-profit organization founded and established by the homeowners and operators throughout Ontario in 1991. At that time all applications were accepted. As the association evolved and matured it established for its members a standards checklist and code of ethics which today all members in good standing must adhere to and abide by. The monitoring and reporting of violations of these good practices are the responsibility of nine directors throughout the province. This information is kept confidential and is used only by OHSCA as we self-police our members in an effort to ensure quality homes. The nine provincial directors and five executives have been given the authority by the members to either accept or refuse and, when necessary, repeal memberships.

Presently, our membership stands at 110 members, or approximately 73%. These homes represent 1,160 residents, or 84%, of the residents in HSC homes in Ontario. In the remaining 29% of homes that are not members, we are aware there are homes operating and practising within our standards that would be accepted by this association; however, there may be others that would not. The association is presently 100% funded through annual dues by the members. All area and provincial directors are volunteer and are elected by its members. All area and provincial directors are volunteers and are elected by the members.

**Mr Mike Dowdall:** I'd like to carry on with page 2, explaining the HSC program and when it was created, in 1964. At that time it was to provide long-term care to people with a serious mental illness. Over the past five to six years, through mental health reform and the mental health system changing, the program has evolved into both short- and long-term care for the seriously mentally ill. The reason for our activities here today with the CTOs is that we are basing ourselves as proof that if the people are supervised and carry on with their medication in a proper environment, their quality of life is enhanced greatly. Our homes are heavily regulated by the Ministry of Health, as opposed to the unregulated boarding homes



etc which do not have the supervision and assistance with medications and with daily life skills.

There's a level of care expected in a home for special care, which of course would enhance anyone with a CTO because they would have 24-hour response to a problem or an oncoming crisis. As each individual is different, these homes are geared to respond to the different needs of each individual resident rather than to have a form of response which would generalize the care for the people involved.

In a lot of cases you're allowed to assist these individuals of their own free will because you have a trust engagement with the person. Persons with serious mental illnesses have a great deal of paranoia when it comes to trust. Whether it's trusting a medical professional, a friend etc, you must open a relationship and make sure that relationship is sustained.

Our homes: As you can see, we've listed out many of the things that a home provides aside from the roof, bed and meals. We make sure they have a medical practitioner, whether it's a house doctor in some of the rural locations or it's a personal physician in the more urban settings. They get regular medical care as well as regular psychiatric care, and if the psychiatric care is not available close to the home, then we either make arrangements for a psychiatrist to come and visit or we do the mileage and take them to the psychiatrist. None of this would be left to the owner's prerogative; it's all under the medical and psychiatric care of their physician and psychiatrist.

The HSC program has proven to be an extremely valuable resource for the province of Ontario for people with serious mental illness who cannot live independently. There are many who can manage their own affairs and live independently. The people we house are persons who do not have these abilities or have not as yet learned these abilities to take care of themselves. That is the transitional part of our program; it's people coming in who are unable to feed themselves, unable to master their medications etc. We get them on the program, get them straightened away and hopefully they move out into more independent living, sometimes with a social worker on a weekly visit and sometimes with a social worker on a monthly visit. Obviously, the goal is to give these people a better quality of life and move them out.

Many of the residents in our program have come from less supportive housing environments and their needs were not being addressed or met. These people have turned into both satisfactory residents and normal human beings, working within the community fabric, rather than being isolated in a boarding house or sitting in a room by themselves with no one paying attention to them.

In many cases we have taken people from the homeless population through the different hostels. These people, with a lot of encouragement and a lot of care from outside agencies etc, have been a success and are remaining stable in the homes.

A long-standing inadequacy that's painfully clear is the current severe shortage of this type of housing, and

that's province-wide. We can tell you that as close as York region the system is saturated, and as far away as Thunder Bay the system is saturated. For these individuals that you're looking to help with a community treatment order, we need an end result. Housing is the same as the best medication available. Stable housing makes a person comfortable and makes them feel good. Therefore, they stay off the street, out of the hospitals and out of the judicial system.

Right now, if the community treatment orders were to be enacted, there are not enough beds in the province to take care of all these new walking-well individuals. There wouldn't be an option for them. They would probably end up back on the street or back in a psychiatric hospital, which is not a choice that any of us would like to make.

We also have the ability within our program to provide even greater levels of care than we do today. We have investigated this with the Ministry of Health. Our owners are quite willing to move forward, providing a more supervised atmosphere, perhaps a more supportive atmosphere to individuals who are finding it very hard initially. The owners are willing to put their private funds forward and make sure that there are buildings for those who need the extra care and support. Of course, that must be funded. Today there is not enough money in the system or in the program or being paid to the home owners to allow them to progress in that direction.

In reality, the current population in HSC may have few housing options altogether. If the homes for special care program was to collapse in this province, there's really little chance of their finding other suitable housing. They would have to be taken back into psychiatric facilities, or turn to the street.

In the overview section, while the care component is mentioned in various statements throughout, it becomes apparent that many underestimate what the care element really is that's provided to the population in our homes. In many cases the care component far outweighs the actual housing component. It must be understood that these people have repeated problems, spontaneous problems which happen inconsistently, and you must have a person there who can respond to each individual's needs on a 24-hour basis. Outside support services are certainly valuable. They assist these individuals, but they're not available 24 hours a day.

#### 1750

The style of care in an HSC home provides the resident with a familiar stability in their lives, including their address, neutralizing a situation which, under many other housing options, results in hospital readmission, and that's very costly to the Ontario taxpayer.

Our resident population consists of individuals who range in diagnosis from developmentally challenged to psychiatrically diagnosed and include those suffering from addiction, defective behavioral management skills, and other affective disorders, who would not normally or successfully fit into a less supportive environment. The instability of their mental health leads to confusion and



accelerates the decomposition process, which can result in a complete breakdown of an already fragile ability to cope with life as they do. When these situations appear, OHSCA is confident our homes have the ability to recognize this situation, intervene and diplomatically diffuse it, avoiding the possibility of a full-scale crises. When you're dealing with persons on a CTO, if they are not stabilized, they will cycle. They will then get well on their medication and in many cases say, "Now that I am well, I no longer need my medication," and be back into the system again.

The ability to intervene and stabilize a crisis before it reaches a climax decreases the cost of other community services such as ambulance, hospital, police and the judicial system. This alone saves our government a tremendous amount of health care dollars and other associated government costs.

We have put forward some suggestions. The following are some suggestions from the Ontario Homes for Special Care Association to alter the HSC program in an attempt to address the need when housing and 24-hour support are a component of a community treatment order.

(1) Continue to bring HSC under the umbrella of mental health reform and have HSC recognized as a mental health provider that can be flexible to the needs of a geographic region or area while remaining consistent through the Ministry of Health administration and control.

(2) Maintain and ensure that home standards, safety, accountability and monitoring measures are in place and enforceable.

(3) Ensure that the HSC program and CTO are focused on the resident's quality of life, enabling operators to provide for and assist an individual to reach their maximum potential.

(4) Fund the HSC program at the proper levels to allow the homes to be responsive to the above and be profitable small businesses in Ontario, therefore keeping the owners that you have today and attracting quality ownership in the future.

(5) Community supports must be put in place where they are absent and all "seriously mentally ill" must have equal access to these supports.

**The Chair:** Thank you very much. That leaves us with just slightly under five minutes, let's say four minutes, per caucus. This time the questioning will commence with the government.

**Mrs Julia Munro (York North):** Thank you very much for coming here this afternoon. I have to insert a personal message here in that I've had the opportunity to visit both of your homes and several of the homes in my riding. I think that your experience in homes for special care and understanding some of the issues from your perspective are really important to this committee. I certainly want to compliment you, not only professionally on what you do for the residents of your homes, but also for being able to be here today to give us some input into this process.

I wonder if there are any specific areas of amendment you would like to offer at this point with regard to the Mental Health Act and the Health Care Consent Act, given the kind of practical experience you have and recognizing that you have provided us with some of these suggestions at the end of your brief.

**Mr Dowdall:** We would just like to comment that obviously we are in favour of this type of order, community treatment orders, because we have personally been through the results of successful medication treatment for individuals who are not stable. Once you make these persons stable and get them into an environment of safety, then they no longer are a danger to themselves or a danger to anyone else, whereas some of the residents we acquire over time have a lengthy record with the police department. In some cases we're still going to court seven and eight months after they've been admitted to our homes, all over some violent issues, drug dealing etc. It just seems that when they get into a stable environment and get on a medication themselves so that their schizophrenia or paranoia is not affecting them, then they stabilize and they're quite normal human beings. I think it's a terrible shame that somehow in Ontario we've found a way to allow people to deteriorate and we don't have a choice to turn that direction around.

**Ms Lankin:** Sorry to interrupt. I just want to offer my apologies. I have a scheduling conflict and I have to leave. I appreciate your presentation and I'll be sure to call you if I have any follow-up questions.

**Mr Dowdall:** Certainly.

**Mrs McLeod:** Just a couple of questions. The funding that would support the psychiatric care that many of your residents need would be Ministry of Health funding. Is that right? In terms of the establishment of any new beds, you would be eligible or members of your association would be eligible to apply for capital funding for the creation of new beds?

**Mr Dowdall:** No.

**Mrs McLeod:** So all the capital funding has to be—

**Mr Dowdall:** Private.

**Mrs McLeod:** —leveraged privately, which is often difficult in the not-for-profit sector.

Then my next question is, with the community beds that are being developed for people who have psychiatric difficulties—and there's a three-phase program the government has introduced—are you participants in the first phase of that? Is there a possibility that homes for special care would be able to establish that there would be some funding for actually establishing new beds as well as receiving ongoing operating support?

**Mr Dowdall:** Actually, the way it has to work under the criteria today is that homes for special care would have to be linked to an existing transfer payment agency to access that funding. To date, none of our homeowners have opted to align themselves in that way with a transfer payment agency, but certainly that is available. Within the ministry itself we have been, over the last six to eight months, dispensing beds in various areas of the province



where there's need and licensing new homes for these same individuals.

Our involvement with the homeless criteria has always been stable and has always been active, because the shelters in Toronto, Thunder Bay, Brockville, Kingston, Hamilton or wherever they happen to be already utilize our homes as stable housing for the individuals once they get them in off the street. The only thing we don't access is the capital funds. Our owners capitalize their homes themselves and then of course want the beds filled by the ministry.

**Mrs McLeod:** But the housing initiative relates very directly to the bill because it is, as you've said, a significant part of providing the community support. Maybe, Mr Chair, I could ask for this as a clarification just for my own information. I don't have the actual dollar figure in front of me, but I think it's something like \$40 million, \$41 million over the next three years—

**Mr Clark:** It's \$45 million each year for the next three years.

**Mrs McLeod:** Is that capital funding or is that considered to be the operating—

**Mr Clark:** It's operational funding.

**Mrs McLeod:** That's operational support. So then the capital funding to establish those beds has to come from the private sector? Thank you. I appreciate that qualification. I've probably now used my time, have I? I have another question.

**The Chair:** Please go ahead. I must apologize. When I recognized Ms Lankin, I didn't realize Mr Clark had a question as well. So feel free to take half of her time and Mr Clark can have the other half.

**Mrs McLeod:** I won't abuse that. I wanted to ask, in the work that you do, do you find that your members are often working with individuals—I guess I want to follow up on your last response to Mrs Munro. Do you find that there are individuals where you just can't provide the help they need and a community treatment order would be of assistance? I'm just wondering how you see that being helpful to you in a specific way.

1800

**Mr Dowdall:** Certainly there is an opportunity for that to take place. Today we get residents who, as you say the nice way, you can't handle, and if you had access to an outside agency to assist you with that individual and they were forced to take the assistance or to be assisted, then certainly you might be able to stabilize them and keep them in the home.

The way it is today, of course, you can't force them to take the medication, you can't force them to work with a community service. So you have to go to the ministry and say, "This individual is upsetting to the environment of the home to a point where they're a danger to others or a danger to themselves, and could you please place them elsewhere?" It's pretty much understood that if we can't handle them, there isn't going to be much of a community-based housing element that can handle them, and they normally return to hospital or end up homeless.

**Mrs McLeod:** But if the individual is non-compliant with their medication, which would make them a candidate for the community treatment order, and they're still saying, "No, I'm not going to take my medication," how do you enforce compliance?

**Mr Dowdall:** We wouldn't. We would certainly use whatever services were available. We'd try to coerce the individual to take it, but if a person is going to be forced to take medication, it's going to be by someone other than a home owner or a home operator in a home for special care.

**Mrs McLeod:** Do you think just the existence of the order is almost like an agreement that would encourage them to be compliant?

**Mr Dowdall:** I think so.

**Mrs McLeod:** I'm leading a little bit.

**Mr Dowdall:** In many of our homes, people are told: "You must be a reasonable individual with the others in the home. When you don't take your medication, you're not a reasonable individual. So therefore you have to make a personal choice here. Do you like where you live? Do you enjoy the individuals you live with? Then you should take your medication. Otherwise, I think you should go looking for another place to live."

**Mr Clark:** I just have one question. First, I want to make a statement. You stated in your suggestions that you wanted to focus on the residents' quality of life and try to assist patients, individuals, to achieve their maximum potential. I would argue that everyone in this room would agree that is the obvious goal we're all trying to accomplish.

That being said, the previous witness had raised skepticism about community treatment orders and whether the supports would be there in the community and told a hypothetical story about that.

The legislation talks about a plan for treatment for people. Hypothetically speaking, what would be your ideal form of a community treatment order? We heard while we were on consultations that a physician would be not only looking at supportive housing and medication but would be looking at vocational counselling and making sure the supports are in the community to encourage the individual to reach their potential. What would be your ideal community treatment order, for example, if I was in need of such an order?

**Mr Dowdall:** First of all, you'd have to have the persons at the first contact educated as to what a community treatment order covered and what was involved, and when you saw, observed, heard about this individual acting irrationally, so that they fit the criteria of a community treatment order, you would have to have those people knowledgeable about what they should do with that individual right away, who they would contact, whether it would be: "Do we take them to a hospital? Do we take them to a treatment centre?"

Once the person has made first contact, then they must make sure they make this individual understand, "This is not now your choice; this is an order and you must comply," or the other option; you must offer another



option, whether it be jail or whatever. But there has to be a criterion. It's the same reason why I don't walk into IGA and steal bread: because I know there's a good chance I'm going to get caught. They must understand that there is something back there if they don't follow the community treatment order.

Once they have complied or offered to comply with the treatment order, you must make sure they have stable housing, you must make sure they have both medical and psychiatric facilities available to them right away, because there are a lot of people with a psychiatric illness not on medication who don't realize what their medical disorders are. Those must be dealt with immediately. Then, after you have them stabilized, you must give them something for their mind to do now that their mind is operating. So you need vocational help, you need support workers, you need social workers. You need all of these individuals to reacclimatize these individuals to the community, because realistically before they've gone on their medication, although they've lived in the commun-

ity, they wouldn't recognize the community. So you have to reaccess them to what is available in the community, and you must make sure you're consistent. It must continue on. It can't be something that's three months and, "OK, Johnny,"—or Suzie—"go out and do your thing," because it won't work.

**Mr Clark:** So, not meaning to put words in your mouth, community treatment orders for you are not just about medication?

**Mr Dowdall:** No, they're about changing their whole lifestyle. This gives these people an opportunity to have a quality of life that a lot of them will never realize unless you force them to realize it.

**The Chair:** Thank you very much for coming before us here and, again, our appreciation for your accommodating a later schedule. I appreciate everyone else who has come to listen to the proceedings today.

The committee stands adjourned until 10 o'clock at the Sheraton Hotel in Hamilton, Friday morning.

*The committee adjourned at 1806.*

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Ms Lorraine Luski, research officer, Research and Information Services



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# Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

## Official Report of Debates (Hansard)

Friday 12 May 2000

## Journal des débats (Hansard)

Vendredi 12 mai 2000

### Standing committee on general government

Brian's Law (Mental Health  
Legislative Reform), 2000

### Comité permanent des affaires gouvernementales

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Friday 12 May 2000

Vendredi 12 mai 2000

*The committee met at 0958 in the Hamilton Sheraton Hotel, Hamilton.*

BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr Steve Gilchrist):** Good morning. I wonder if I could call the hearings to order. The purpose of our visit to Hamilton today is to consider Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996.

CANADIAN MENTAL HEALTH  
ASSOCIATION,  
NIAGARA SOUTH BRANCH

**The Chair:** The clerk advises me that our first couple of presenters are already here today. I know it's a couple of minutes early, but all the members are present as well. So with your indulgence, I'd like to call forward the Canadian Mental Health Association, Niagara south branch, if they could join us at the witness table. You have 20 minutes to make your representation. If you wish to allow any time for questions, make sure you take that into account, please.

**Mr Neil McGregor:** Good morning. It's a real honour to be able to appear here this morning and make a presentation to the standing committee on general government regarding Bill 68, otherwise known as Brian's Law.

My name is Neil McGregor, and I am the past president of the Niagara south branch of the Canadian Mental Health Association. I have been on the board of directors for the Niagara south branch since 1992 and was president from 1996 to 1999. I also serve on the board of directors of the Canadian Mental Health Association,

Ontario division. I am also the chair of the board of directors for AIDS Niagara, a local association providing supports and services to people infected with or affected by HIV/AIDS. So you can see that I'm certainly enjoying my retirement from working for many years at Niagara College.

I believe you have in front of you the outline of my presentation. It starts with a brief description of the Niagara south branch of the Canadian Mental Health Association. I just want to emphasize a couple of points. This is a community-based association. It is a volunteer-led association. Of course it is professionally managed, and it is values-driven. As a result of that, our branch is quite concerned about the amendments to the Mental Health Act, which we are discussing here this morning. I have outlined our vision, our mission and our philosophy, and I'm not going to take the time to read all that. I have also indicated some of the supports and services we offer the residents of Welland, Port Colborne, Pelham, Niagara Falls, Fort Erie and the surrounding communities.

I know I'm not telling you anything new when I say that Brian's Law, which amends the Mental Health Act and the Health Care Consent Act, is primarily directed toward people with serious mental illnesses, and of course the main focus is on the CTOs, the community treatment orders. I'm not going to spend much time talking about that part of these amendments this morning, because I know it will be addressed in many other presentations not only this morning but at some of your other hearings.

The concern of the Niagara south branch is more about what is not in the amendments to this bill, and what we would like to see. We would like to see—and we support the Ontario division of the Canadian Mental Health Association in this—more comprehensive health systems legislation, which would ensure funding of a full range of community health services which would apply to all persons who require services, and which was recommended in the Ministry of Health and Long-Term Care document called Making It Happen. I'm sure you are all aware of that document.

The mental health legislation should ensure that there is a basic core of services available in a timely way to everyone in Ontario. These services should include services needed to treat persons with mental illnesses, services to support families and services supporting

promotion of mental health and the prevention of mental illness. From my understanding, that is not a part of the amendments that are being proposed.

There is strong evidence that providing treatment and comprehensive supports in the community, which include employment and housing, improves people's quality of life and reduces the need for hospitalization.

The next section of my presentation indicates some of the gaps in services that we have in the Niagara area for people with mental health issues. I have just picked up on a few of those, which have all been taken from a document the Niagara District Health Council put together. Their document is dated 1997, which of course is three years ago, but it is still relevant. Because very little funding has come our way to address these problems, they are still problems.

I have indicated the gaps in housing, especially affordable housing for people with mental health issues. As I've indicated here, as measured against the benchmarks, by the year 2007 there will be a need for 988 residential spaces, and we don't have that in the Niagara area.

Community support case management: For the 10 years from 1997 to 2007, it is estimated that the Niagara area will be short 41 to 67 community support workers or case managers.

Crisis care: There have been some improvements with additional funding for crisis care in the region, but we still do not have 24-hour coverage. We still do not have seven-days-a-week coverage in some of the programs, especially the safe bed program.

The last gap in service I mentioned is the fact that there is a shortage of psychiatrists in the Niagara area. Today there are 18 practising psychiatrists in the Niagara region, and the benchmark established by the Ministry of Health and Long-Term Care indicates that for the population of our area there should be at least 50 psychiatrists in the region.

Our branch is making five major recommendations. These recommendations were adapted from the position paper that was prepared by the Canadian Mental Health Association, Metropolitan Toronto branch, but our branch is in support of these recommendations. I also mention that yesterday I talked to the executive director of the St Catharines and district branch of the Canadian Mental Health Association and the executive director of the Brant county branch of the Canadian Mental Health Association, and they are supportive of the Niagara South position on these.

Very quickly, then, our first recommendation, that I have already mentioned, is that there is a need to develop mental health systems legislation to ensure funding of a full range of community services.

We agree with the Ontario division of the Canadian Mental Health Association that the government should not proceed with legislation on community treatment orders, but instead should commit to meeting the fiscal and service targets outlined in Ministry of Health and Long-Term Care policies since 1988.

Should the government proceed with CTO legislation, it should ensure that a province-wide system of community mental health and housing services is in place before legislation is proclaimed. Of course, that will require money.

If CTO legislation is passed and proclaimed, it should have a four-year sunset clause and be subject to a rigorous evaluation. And if CTO legislation is passed, it should be transparent with respect to the obligations of service providers to ensure the separation of monitoring and compliance from the provision of treatment. The community-based agencies in the Niagara area are quite concerned about who is going to be monitoring and who is going to be seeing that compliance is taking place if the community treatment orders legislation is passed.

Of course, legislation should ensure adequate funding for all functions.

I would be happy to answer any questions.

**The Chair:** Thank you very much. That leaves us with about four minutes per caucus, and we'll start the questioning with the Liberal caucus.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Good morning and welcome. If this legislation passes as is with the two amendments, and the resources you recommend are not there, what are your organization's fears? Exactly what are the implications?

**Mr McGregor:** Our biggest fear is who is going to be monitoring. Who is going to be seeing those persons identified and for whom the treatment orders are requested, who is going to see that that happens and what is going to be the impact on the support workers?

I think one of our main fears is knowing that most people think that as soon as you say "community treatment orders" it means requiring the person to take medication to try to control their mental health issues. But there's a lot more to treatment than that, and what are the impacts on that as well?

1010

**Mr Richard Patten (Ottawa Centre):** Along the same lines, I know this is a concern of many organizations and agencies, and that's the relationship between the treatment relationship and the role related to either the monitoring or the support and compliance. My understanding of this is that the attempt is a consensual plan that would have the agreement of the patient or the substitute decision-maker and that the agency is not placed in a position of, "Well, if you don't take it, we're forcing you to do that." That is not the intent, as I understand it, or the spirit of it, but I can understand the sensitivity.

When you say, "separation of monitoring and compliance from the provision of treatment," how would you see that?

**Mr McGregor:** I'd like to make a comment on the first part of your question, if I may. It is my understanding within the amendments that if the community treatment orders are in place and if a person has been requested to comply with these orders and they don't, that person may be hospitalized. To my way of thinking, that removes choice on the part of the person who is



suffering a mental illness. It's no longer voluntary; it's involuntary. If they don't do it, they will be hospitalized. For many of them, that's a horrible thing to happen to them.

The second part of your question was how I see it being implemented to separate the monitoring and compliance from the actual support the workers do. I'm not a lawyer or a politician; I'm just a community volunteer. But I would think it would have to be very clearly stated in the legislation, or certainly in the procedures, exactly who is going to do the monitoring and who is going to do the compliance, and it should not be these community support workers, because that would destroy their relationship with their clients.

**Ms Frances Lankin (Beaches-East York):** I was interested in your comments about the lack of resources in the region you are representing. Much of the literature I have been reviewing, or at least a synopsis of studies from US jurisdictions that have a similar legislative initiative, indicates that the likely success of such a program as CTOs—I think they call them IOC's or something like that in the States—is jeopardized by the lack of on-the-ground services. In particular—and I raised this in hearings Monday—I heard from a number of heads of psychiatry at general hospitals their concern about the broadening of involuntary committal criteria and what that is going to mean. They say there are some people who are not committed now, not because they don't meet the criteria but because there's not a bed available, and that means voluntary patients can't find a bed. I raised that when the OMA was presenting and their response was that the use of community treatment orders would open up a lot of beds, that there would be excess beds in the system and that they didn't see a need to revisit any of the hospital restructuring commission's reports. They referred to a US study, in particular on the Web site of the Stanley Foundation.

My quick overview of some of the material, and also taking a look at your parent organization's Web site and the review, is that there's a much more mixed view of the success of CTOs in terms of lower bed utilization. Do you have any comments to make on that? Do you worry about the fact that we actually need more community resources and, contrary to what your organization might normally advocate, institutional-based resources to make this regime successful?

**Mr McGregor:** The Canadian Mental Health Association, Ontario division, has done some very extensive research into that very point in trying to determine how successful community treatment orders are in those jurisdictions that have them in place. There is quite a lengthy list about this research as well and it's all available on the Web site of the Ontario division of the Canadian Mental Health Association. I can't quote them all offhand; I do have—I guess it's in my briefcase back there—a list if anyone's interested, and I could leave it with you if you like.

Generally the research is such that there is no evidence that community treatment orders are successful in reduc-

ing the number of people who might require hospitalization. It doesn't seem to make any difference in terms of those people who become seriously mentally ill and so on and so forth. What does make a difference, though, is the supports that are available before they reach the point where they are seriously mentally ill.

**Ms Lankin:** One of the other issues I raised on Monday was my desire to see in the legislation some protections around access to service, minimum kinds of services that must be available, and you make reference to something like that in your document. Also there is what constitutes a treatment plan. The third thing, and this is what I wanted to ask you about, was the establishment of a mental health advocate. We currently have the Psychiatric Patient Advocate Office, which is a rights advocacy base directed at the patient. But in jurisdictions like British Columbia they have a mental health advocate who reports to the minister about the state of quality of care in the mental health system and makes recommendations about what's missing, where the gaps are, how the system is working together or not. Would you favour the establishment of that kind of office and see that as part of this legislation?

**Mr McGregor:** Yes. If the CTO portion of the legislation is going to go ahead, I certainly think there has to be an advocate of some sort to make sure that everything is being done, that all supports are in place before a person reaches that state of life where they require forced treatment.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** Mr McGregor, thank you for your presentation this morning. I know you recommend that this legislation on community treatment orders should not proceed. There's been discussion this morning, and you're concerned with lack of choice or the mandatory aspect of this. I would point out that community treatment orders are issued by a physician or a psychiatrist or medical practitioner, and that the person subject to a community treatment order receives advice on their rights, or if they're incapable of interpreting that advice, that person's substitute decision-maker receives that advice.

We are hearing a divergence of views from various stakeholders. You mentioned the research, and there may well be conflicting research. There is a body of research in the United States that community treatment orders reduce hospitalization, many of the orders directing a person for an assessment rather than hospitalization. I guess the question I'm leading up to—you mentioned two areas—is, are there other concerns that you have, reasons you would be opposed to this legislation on community treatment orders?

**Mr McGregor:** One of the points I made in my presentation is the lack of practising psychiatrists in the Niagara region. To me, they would be the main person who should be prescribing the treatment, issuing the orders and so forth and so on. There is a major gap in service right there. If we're going to have the community treatment orders, I certainly would like to see some



increase in funding so that we will get the qualified people with expertise to issue these orders.

It's fine to issue the orders and to prescribe what treatment should take place. It is seeing that it happens that is still our concern. I don't think the psychiatrist or even the other medical practitioners would be doing that. They don't have the time. It will fall on the community support workers or family or friends or whatever. That's a real onus to place on them.

**Mr Barrett:** I share your concern. We have no psychiatrists in my area, south of Hamilton. For that reason, these orders are issued by physicians.

**The Chair:** You have one minute, Mr Clark.

1020

**Mr Brad Clark (Stoney Creek):** I have a quick question for you. You stated that if a patient is not in compliance with a community treatment order, they're hospitalized. Yet the legislation states that if the physician who issued or renewed a community treatment order has reasonable cause to believe that the person subject to the order has failed to comply, they can issue an order for examination. It doesn't say they can be hospitalized; it says they can issue an order for an examination. Further, it goes on to state that they can only do that if they're of the opinion that the mental disorder is likely to cause serious bodily harm to himself or herself or to another person or substantial mental or physical deterioration. That's not quite the same as what you stated.

**Mr McGregor:** If I did not state, "may be hospitalized," I should have said, "may be hospitalized." I didn't mean that they will be hospitalized. I also recognize that sometimes the intent behind legislation is not what happens in reality.

If I can digress just quickly, I saw a very interesting program this past Sunday, 60 Minutes. One segment was talking about community treatment orders which are being proposed in New York state. The second segment was about the three-strikes law that was passed in the state of California. The intent was to get violent criminals off the street. Instead they're getting people serving life for stealing a loaf of bread.

**Mr Clark:** With respect, that has nothing to do with where we are today.

**Mr McGregor:** No, but my point being intent.

**Mr Clark:** I'm assuming you're not saying that if someone is not in compliance with a community treatment order and a physician or psychiatrist believes they are a threat to themselves or to others, they should be allowed to remain at large, when they could, in essence, commit suicide.

**Mr McGregor:** There is no evidence that equates mental illness with violence.

**Mr Clark:** I asked about suicide.

**Mr McGregor:** Pardon?

**Mr Clark:** I said, in essence, they could commit suicide. Are you suggesting that if they're deteriorating and the physician is concerned they're going to hurt themselves, they should be allowed to stay out and not

take the medication and that they should not come in for an examination?

**Mr McGregor:** There is existing legislation that can take care of that.

**The Chair:** Thank you, Mr McGregor, for coming before us here this morning. We appreciate your comments and the time you've taken.

Our next group this morning is the Schizophrenia Society of Ontario, Niagara region. They can come forward.

**Ms Lankin:** Mr Chair?

**The Chair:** Yes, Ms Lankin.

**Ms Lankin:** I'd like to make a request of legislative research. There has been some reference to the US studies. I think there is a body of information that could be helpful to us. In particular, on Wednesday, Mr Connell from the OMA made reference—and I think he was providing us with one of the studies—to the Stanley Foundation, which does have a body of research on its Web site. I would also like to ask that reference be made to the Bazelon Center Web site. I do have that reference. I think the CMHA has also indicated that it has a compilation.

There are four studies in particular, however, that I would like to ask for a review to be done on. The first is a recent study by Swartz et al, 1999, for information of the committee. It is a study that looks at the relationship between CTOs and psychiatric bed utilization. It does find, for certain subpopulations, a very positive relationship in lower bed utilization, and for other populations not, and also supports the contention that the effectiveness is multiplied when there is a strong support of community services behind the community treatment order.

Geller, 1999, looks at criteria for the success of community treatment orders.

The Bellevue study, which was done by Steadman et al, 1999, was a study of 142 patients and looks at enhanced community supports versus without enhanced community supports.

The last specific study is Torrey and Kaplan, 1995. It is the results of a US national survey on the use of outpatient commitment and looks at the legislative regimes and then the utilization and the success.

If we could do that, I think that might be helpful for all of us, assuming that this part of the legislation is likely to pass, in how we make it the most successful it can be.

**The Chair:** Thank you, Ms Lankin.

#### SCHIZOPHRENIA SOCIETY OF ONTARIO

**The Chair:** Good morning, Ms Volpatti. Thank you for joining us here today. We have 20 minutes for your presentation, and if you wish to allow time for questioning, please factor that into your presentation.

**Ms Selina Volpatti:** Thank you very much, Mr Chairman. My name is Selina Volpatti. I am here as the immediate past president of the Schizophrenia Society of Ontario.



Let me tell you briefly about our association. It was begun in 1979 as the Ontario Friends of Schizophrenics. We changed our name in the first year of my term, in 1994, to correspond with other associations across the country and the Schizophrenia Society of Canada. It's no error and it's not a surprise that our organization was formed in 1979, the year after the Mental Health Act was rewritten—rewritten in a way which made it very difficult for families to get help for their loved ones who had schizophrenia.

My written presentation will be forwarded to the clerk of the committee. I don't have it with me today, but I do have some remarks.

I would like to tell you something about schizophrenia, and I would like to state very clearly that I'm not here to speak about mental health issues. I'm talking about mental illness, and those people who do have issues of mental health are probably in a whole other category than people who have schizophrenia. Schizophrenia is by far the most prevalent and the most debilitating of the serious mental illnesses. It leaves those whom it attacks, unless the disease is treated, with very little insight into the fact that they have any problem at all and with very few resources. Unless they have their families helping them, there is very little out there that is actually going to help.

Schizophrenia is a medical illness. The primary response to schizophrenia must be medical. The extension of social services to people with schizophrenia, in the absence of a concerted effort to extend medical treatment, will fail. Medical treatment must be primary in a treatment program that of course includes a comprehensive system of social supports. We're all aware of that, and it's very important that those supports be there. However, what families have found, particularly over the last 20 years, is that when you have a person who is incompetent, who is not able to make a rational decision about treatment, then a substitute decision-maker—whether that be the family or the state or the province, whoever that is—must step in to make the decisions for that person.

What we basically want to do with our support of the changes to the Mental Health Act—and we are in full support of the changes that are proposed—is to move from a statute of risk to a statute of care, because we firmly believe—we not only believe, we know from bitter experience—that when you wait for dangerousness it is often far too late to be of help to the person who is suffering. We need a statute of care in that one of the main criteria should not be dangerousness but the need for treatment. The obvious physical and mental deterioration of a person should twig the need for treatment, particularly when that person is not competent enough to make a treatment decision.

We are aware that one of the criteria in the act as it stands now is the need for treatment. However, the language around that is very unclear. It talks about "imminent" and that has been interpreted and probably misinterpreted by professionals to say that the danger must be immediate or the deterioration must be immediate.

Our sense is that if you have language in the act which is unclear, which does not promote prompt treatment, or indeed which in some cases allows a professional not to give treatment because it's used as an excuse not to give treatment, then that language should be changed.

#### 1030

When we talk about schizophrenia, we are talking of a matter of life and death. The danger to others is discussed in the media so often, and that's very real. We represent thousands of families across this province with sufferers who have schizophrenia, and there are very few families that will tell you schizophrenia is not associated with violence, because it is. That's a very hard fact for families to contend with, but there are very few families I have spoken to across the province, and indeed across the country, who do not tell me that untreated schizophrenia leads to violence in most cases.

We support the changes to the act. Of course the other part, separate from the legislation, is the provision of services, and it's kind of a chicken and egg question. What do you have first, the legislation or the services? Our feeling is that you have the legislation in a way that holds the government accountable to provide the services that are demanded by the legislation. We strongly support that the legislation must come first and that gives us a basis to advocate on behalf of our relatives for the services that really should be there.

We fully support having a mental health advocate for people with schizophrenia, providing that's not a member of the CMHA, because the CMHA deals with people with mental health issues, and I want to say again that we deal with people who have serious mental illnesses. If they were mentally healthy, I probably wouldn't be here today.

The service issue is indeed important and I want to state for the committee as well that I am the mother of a 36-year-old son who is critically ill with schizophrenia, who because I was able to access treatment for him—don't ask me how because I won't tell you—after seven years of institutionalization, and wonderful treatment in this province in a system that is very hard to access, is doing marvellously well today. He is living on his own, is driving his own car, has a part-time job, is on disability but is certainly a success story. Ten years ago, if someone had told me this was possible, I wouldn't have believed it. I have been told by every psychiatrist who has treated him that if it were not for the medication he religiously takes today, he would be in an institution for the rest of his life.

So I'm here as a living example of what good law can do, but I had many opportunities at my disposal to procure for him the treatment that really is so difficult to procure for most families and most people who suffer. Basically, that's my presentation.

**The Chair:** Thank you very much. That's left us about three minutes per caucus. This time the rotation will start with the New Democratic Party.

**Ms Lankin:** Ms Volpatti, thank you for your presentation and for also sharing your personal experience with us.



I want to clarify one thing. My reference to a mental health advocate is not for a person who would be an individual patient or rights advocate; it's a systems advocate. In the one in BC, that person is expected to monitor the performance of the care systems and suggest policies, practices, programs and services for people who are most seriously mentally ill. I think it's an accountability that you were talking about, the legislation, back to the government.

Specifically on that and the cart before the horse, on services and legislation, I'm proposing to marry the two. In previous legislation that existed in this province, long-term-care legislation which is no longer in effect, there was a provision for a list of minimum services required in every region of the province. We don't have anything like that for mental health services or treatment provisions for the mentally ill. I'd like to see something like that built into this legislation, as well as using some of the US legislation as a basis, a definition of what constitutes a treatment plan, so that it's not simply left open, that there are some elements that must be considered for what a quality treatment plan is.

When I raised this on Wednesday, the Schizophrenia Society of Ontario was supportive of those ideas. Have you given any thought to that? Has the Niagara region given any thought to that?

**Ms Volpatti:** I would say that we would certainly support that, providing that the treatment order included medical treatment. To me and to people in Niagara region and to people across this province, that is key. So often I think we've skirted around the issue of schizophrenia as a medical illness.

**Ms Lankin:** That raises something. When I met with the East York Sharing and Caring group, which is the local Schizophrenia Society branch, we collectively came away from that meeting thinking that there is something so different about the experience that families of schizophrenics, and patients, have from many other types of mental illness that it almost requires a definition of treatment and medical treatment options on its own, and that some of the differences between psychiatric survivors of other types of mental illnesses and their dispute with this kind of legislation and the discordance that's occurred is a lack of understanding of the differences. Do you think that's a valid observation?

**Ms Volpatti:** It's my opinion, having thought about this for some time, that perhaps the act does need a preamble to define exactly who are the seriously mentally ill who should be governed, I quite agree with that. I believe that's been done with the Criminal Code. I think Priscilla de Villiers, for example, was successful in getting a preamble to the Criminal Code which clarified some issues that had been unclear for a long time. I think the Mental Health Act could do with a preamble indicating exactly who the persons are who are intended to be covered by these sections.

**Mrs Julia Munro (York North):** Thank you very much for coming here today. You talked a little bit about the way in which a community treatment order can

benefit those who have schizophrenia. I just wonder whether or not you could give us any specific examples of how you see that particular mechanism being useful, being helpful?

**Ms Volpatti:** Yes. I'll give you an imaginary example, because we don't have much experience in this jurisdiction.

**Mrs Munro:** Yes, of course.

**Ms Volpatti:** I would suggest a person who is being released from a psychiatric institution into the community, who has probably been back and forth to that institution many times, who takes his medication while he's living on the ward but once he gets out in the community, for one reason or other, does not take the medication. Speaking from my own experience, two beers are enough for a person with schizophrenia to forget, "This is the time I have to take my medication." If they forget once, they'll forget the next time, and on and on it goes, and before there is any help for that person, he has deteriorated so badly that it's back to the hospital.

I see the community treatment order working in such a way that if that person—let's say that when he's just released from hospital, he's going to report to his team once every three days, and if he doesn't report, they're going to have to look for him and make sure he has taken his medication; if not, he is going to be brought back into hospital. But when he's brought back in that way, he is not going to have deteriorated to the degree he would have deteriorated if he'd been left out in the street for 30 days, 60 days or 90 days. It's with this revolving door thing that we see the community treatment orders really playing a factor.

I know that in New York state, where they have not yet been implemented but where they are using them, where they are talking about them, where teams are talking about them, just saying to a person, "You must take your medication, and if you don't, we have something in place by which you're going to have to be brought back into hospital" is enough to make that person take their medication.

Many doctors have said to me, "We have people with cancer who take chemotherapy that causes horrible side-effects and nobody really has a problem with that," but when we're talking about somebody who has schizophrenia, just the least side-effect is enough to make some people out in the world go absolutely screwy. We have to remember all of this, and the fact that the medications have improved so much too over time.

**Mr Patten:** Thank you for coming today. I would like you, if you could, to elaborate a little bit. When you talked about the need to move from risk to care, could you expand on that?

**Ms Volpatti:** Sure. I think, Mr Patten, that the criterion of dangerousness is really a criterion of risk, that that person is not helped until they become a risk to others in the community. It's nice to think that it works if you're a risk to yourself as well, but we all know that's probably not true. Once you become a risk, a danger to others, then you're likely to get treatment. We say that that is just too



late, that we would like to have a statute that shows caring for people, that when the physical and mental deterioration begin, that's when you should get the help.

I would really like to refer to a great body of literature, and to Dr Robert Zipursky from the Centre for Addiction and Mental Health, who has done extensive research into the fact that the earlier the medical intervention with schizophrenia, the much better the prognosis is over time. That's a really frustrating thing for parents and families to know if they can't access that treatment in an early way.

**Mr Patten:** With the implication of that, by the way, would you have any suggested amendments then?

**Ms Volpatti:** We have a solicitor who is working on this and he is sending those to the committee. That will be received.

**The Chair:** Thank you, Ms Volpatti, for appearing before us here morning. We certainly appreciate your comments and your personal perspective.

1040

#### WELLINGTON PSYCHIATRIC OUTREACH PROGRAM

**The Chair:** Our next group this morning is the Wellington Psychiatric Outreach Program. I invite them to come forward. Good morning. We have 20 minutes for your presentation, to be divided as you see fit between actual presentation or question-and-answer period.

**Mr Robert Foster:** I'll try to be brief. I also left my glasses back at the office, so I either need a long arm or I'm going to pop out a contact lens so I can see what I'm doing.

I'm speaking on behalf of Wellington Psychiatric Outreach Program, which is a case management organization that provides case management, support and treatment services to 155 consumers in mental health services.

The perspective I would bring to this presentation would be that of a service provider, but also, I have to say that it comes from my previous experience as a consumer and as a family member. That has to colour some of my opinions that I would express today. They may not neatly tie in with the organization I represent, but I think they clearly do.

First, I would like to applaud the efforts of this government in attempting to address the needs of people who are experiencing a mental illness. This is not a cause which has in the past generated much sympathy or support from either government or the public.

In general, however, I believe that this law will not accomplish the desired effect of achieving public safety and getting the help to people who may need it. However, I do believe that the government has a sincere desire to provide protection to Ontario citizens from what is perceived to be the danger presented by a person with an untreated mental illness. Although there may be some who would present a serious danger to themselves or

others, I don't believe they represent a large percentage of people who are mentally ill.

I would like to limit my comments to three main areas of the amendments: involuntary committal, changes to the police powers and the community treatment orders.

**Terms of involuntary committal:** Changing the criteria by removing the word "imminent" leaves the criteria too open to personal interpretation and differential application across the province. If the goal is to make it easier to get people admitted to hospital, where are the beds to come from when there are no beds currently available for those who are actually seeking treatment and would voluntarily enter the hospital? I really don't think we would have the resources to deal with the numbers.

What do the new criteria of substantial mental or physical deterioration mean? It needs a definition so that it would be fairly and equally interpreted and applied. Left undefined, it is open to interpretation and individual judgment calls. In the current Mental Health Act there is already some latitude for interpretation of the criteria for committal. What is the perceived need to broaden these criteria?

**Revisions to the police powers and responsibilities:** The change related to the police not having to witness the acts they would use to judge that someone is a harm to self or others potentially leaves this provision open to abuse and misuse by family members and others. The loosening of the criteria used by the police would also have the effect of increasing the numbers of people they would have to deal with. Do we have the police resources to deal with the increased demand?

**Community treatment orders:** Choice I think is one of the main needed features. One of the features of the proposed treatment orders is that there must be agreement on the part of the patient or their substitute decision-maker. Since the agreement to the terms of the CTO is also the key to release from hospital, there is some element of coercion in that agreement. If there were more resources and the patient could be offered true choices for treatment and support, then the need to force treatment would be diminished.

**Resources:** The revisions would appear to have the desired effect of getting more consumers to the required services. The problem is that there is already a lack of resources for people who are actually seeking services and who will voluntarily participate in these services. Resources are currently not meeting the needs in a number of ways. There are waiting lists for community services such as case management, a lack of hospital beds when they're needed and a shortage of psychiatrists working in the community.

To be successfully treated and integrated into the community, people need personal resources such as adequate housing, social supports and adequate income. Many consumers are subsisting in less-than-adequate accommodation because they have to live within their means. There is a shortage of affordable, subsidized housing, particularly in this city and particularly for single adults. The level of income from ODSP and Ontario Works is



not adequate to provide for decent market rent accommodation as an alternative.

Most community mental health services are provided on a voluntary basis, which is premised on a trusting relationship between the consumer and the provider. Participating in treatment under an order where the provider of service plays both a care role and a policing role in monitoring the order would significantly change the nature of that relationship. For someone whose symptoms often include paranoia, this is probably not helpful or therapeutic.

Responsibility for monitoring and supporting the order may also fall to the family member, particularly if he or she is the substitute decision-maker. This may be an onerous responsibility for a family member to undertake and it will certainly affect the ongoing familial relationships and trust.

For anyone in the service plan, there is an onerous and unrealistic responsibility toward ensuring public safety. The person under the community treatment order will be spending a large percentage of their time unsupervised. The public must not be deluded to believe that community treatment orders provide assured safety. Any community treatment order will have severe limitations in this regard.

Necessary safeguards: The community treatment order can seriously restrict a person's rights for a lengthy period of time. It seems to me, therefore, that it would not be unreasonable to expect it should take more than one person, namely, a physician, to institute the order. Certainly in other jurisdictions they have required two or more physicians to be in agreement to create an order. Otherwise the order could simply become the easy resolution of a difference of opinion between physician and patient about the choice of treatment.

I'm also concerned about the potential stereotyping of mental health consumers as dangerous, when more often it is the consumer who is more vulnerable to bullying and abuse than they are likely to being dangerous to other people.

In summary, I am personally not convinced that CTOs are an effective solution, but if they are to be implemented, and I think they will be, and if they are to be effective, they will put a demand on the system for more resources and services than are currently in place. If the government responds with the concomitant resources as a response to implementing these orders and other measures outlined in the legislation, then maybe some good will come out of the legislation.

**The Chair:** Thank you very much. You have left us just shy of three and a half minutes per caucus. The first round of questioning this time will start with the government.

1050

**Mr Barrett:** Thank you, Mr Foster. You stated in your presentation, with respect to people who are a serious danger to themselves or others, that you don't believe they represent a large percentage of the population, and that's correct. This represents certainly a very

small percentage of the population who have a mental health problem.

Secondly, you stated, "If the goal is to make it easier to get people admitted to the hospital," and that is not the goal. In fact, with a community treatment order coming through a medical practitioner, the goal is to provide assistance for people in the community, to refer them to a psychiatric facility for assessment, but not necessarily hospitalization. Given that the goal is flexibility in this legislation, so that they can be treated in the community, could you suggest any additional provisions that would further enhance flexibility in this legislation so that patients can be better treated in the community?

**Mr Foster:** I guess what I was advocating was alternative resources. We have a number of proposals that are waiting for funding locally, community crisis beds and other things that would be non-institutional and within the community and still provide safer treatment both for the patient and for the community.

I would beg to differ briefly on your point that it doesn't imply hospitalization. I thought the criteria ensured that people needed to be in hospital at least a couple of times before they could qualify for a community treatment order.

**Mr Barrett:** There are a number of criteria, and again it's at the discretion of a psychiatrist or a physician—violence in the community, for example, resulting from an ailment. But we are going the same direction as far as getting assistance in the community rather than in hospital is concerned.

**Mr Clark:** Just a quick question on your concern about the revisions of the police powers and responsibilities: At the present time the police have to observe disorderly conduct. Are you aware that Ontario and Newfoundland are the only two jurisdictions in Canada left with that requirement, that the rest have gone to reasonable and probable grounds?

**Mr Foster:** No, I'm actually not aware of that. I'm more aware of working with the police on a day-to-day basis around some of the current provisions and just know how difficult it is when they have to go and spend hours and hours waiting with the people. If we loosen this up, it will be an issue of resources. To say that they don't have to witness doesn't mean that this act will get implemented, because if you don't have the resources it may not happen.

**Mr Clark:** The fact that other jurisdictions have moved to where they use reasonable and probable grounds has not led to abuse by the police.

**Mr Foster:** I hear what you're saying.

**Mrs Bountrogianni:** Welcome today. You mentioned that participating in treatment under an order where the provider of service plays both a care role and a policing role and monitoring could significantly alter the relationship, and for someone whose symptoms often include paranoia, this is not therapeutic. I can tell you, as a registered psychologist for over 18 years, those things happen anyway in a therapeutic relationship, particularly if paranoia is involved. Relationships significantly



change. It's hardly ever a smooth-going tea party when you're with your patient. I think that's a bit misleading. I think we can all agree that we need adequate resources for any of this to work. If there were adequate resources out there, would you still be against CTOs?

**Mr Foster:** I would never be black and white on anything. There are probably a few very isolated cases where it may work.

**Mrs Bountrogianni:** But I think that's what we're talking about, sir. We're talking about isolated cases and I think it's good that we're having these hearings because I think this has really been misinterpreted, that we're going to be throwing people in jail or in hospitals for ever. This is for those very few cases where there is a perceived and very probable danger to that person particularly or to someone else.

**Mr Foster:** OK, and that doesn't come through clearly in this legislation.

**Mrs Bountrogianni:** Well, maybe that should come through more clearly. Thank you.

**Ms Lankin:** I think there are a lot of people who are concerned that, just like the current legislation is misunderstood, the future legislation may be.

I want to specifically talk about the criteria for a person being placed on a community treatment order. Mr Barrett indicated that a person would go through being sent to a facility for an assessment and then may not be involuntarily committed, but may be sent out to the community. In fact, as I read the legislation, there is no requirement for an actual assessment to take place. If an individual, having been previously institutionalized, meets a number of other criteria, and a physician—it's not necessarily even a psychiatrist—feels or is of the opinion that the person meets the form 1 criteria, just to be sent for an assessment, they don't even have to be sent for the assessment, they could be put on a CTO.

I'm a bit concerned about the sequencing there because the intent of this is that a community treatment order be supportive and be less restrictive than an involuntary commitment, and I think that's what Ms Bountrogianni's referring to, too. But the sequencing in the legislation doesn't seem to support that.

I want to put that on the table and pick up on your suggestion about it taking two doctors to make this decision. In some jurisdictions in the States there is provision for right of access to an independent second opinion, both about the appropriateness of a community treatment order and about the nature of the plan itself, the right to challenge which medication, for example. If you know, as the patient, that you respond better to one and the doctor has placed you on another, there's a legitimate dispute.

Could you comment both on the right of access to an independent second opinion about CTOs and the nature of the treatment plan, and on whether or not it truly is less restrictive if someone's not even provided with a psychiatric assessment that indicates involuntary commitment would be warranted before they're put on a CTO.

**Mr Foster:** I guess I share your concern, and I was offering one solution. Having another objective person, whether it's a physician or a rights adviser or a social worker or whoever, would be very helpful. I was assuming that if two people had to see them that would force some form of assessment and not be an arbitrary decision that just happens to be made by the person who's been treating all the way along.

**Ms Lankin:** Thank you.

**The Chair:** Thank you for coming before us here today. Thank you for your presentation.

## OAK CENTRE

**The Chair:** Our next group this morning is from the Oak Centre. Join us at the witness table, please. Just a reminder to you that you have 20 minutes to divide as you see fit, between either presentation or question-and-answer period.

**Mr Shawn Lauzon:** Good morning. I come from Oak Centre and I'd like to tell you a little bit about Oak Centre. It's clubhouse model. It's a community mental health program. We work with people in a small part of the Niagara region, but we welcome anyone who can come in and can find transportation to our program.

Our program is grounded in the belief of developing real relationships with people and developing trust out of that relationship. Part of what we do in having that relationship with people is that we develop goals together and find our dreams are starting to come out, and all of those things that happen that go along with real relationships. It's out of that real relationship that people start being aware of their own wellness and start finding good strategies towards their own wellness. We believe people should be self-determined in what they're doing.

My name is Shawn Lauzon. I've come here today from the Niagara region and would like to thank you for the opportunity to share my thoughts and concerns about the proposed changes to the Mental Health Act, community treatment orders and what is working and not working in our present mental health system. Much of what I'm going to say today I've already said in my presentation to Dan Newman, legislative assistant to our health minister, Elizabeth Witmer, at the consultation with consumer-survivors which took place at the Raging Spoon in Toronto.

On February 19, 1998, I said the following: "I feel that I can address these issues from two perspectives: first, through my own experience as a consumer-survivor, and more recently in my life as a provider in a community mental health organization that has a broad vision of what people with mental health problems can accomplish in their lives.

"Just a short time ago"—thinking back, this is 1998—"I experienced once again what it was like not to have the available resources in my community. I was supporting a gentleman who was without a home and who seemed to have no support. He sought out help after having all of his money stolen from him while sleeping on the street."



## 1100

I engaged him in conversation actually. This was at a community resource and action centre at the soup kitchen. We had a call from someone else in the community to say that he was sleeping on the street and maybe somebody should go and talk to him. After engaging him in that conversation, he followed me back to the program and that's where we started to have some relationship.

That's when we started looking at the local housing help centre which "was able to put him up for one night and directed him to a volunteer shelter program in the community. There he would receive a hot meal and a clean, safe bed for the night and over the weekend. However, after the weekend other arrangements would have to be made to transport him to another city where he could access shelter for part of the week as the program in our city was only available four nights of the week.

"During this time, he was hooked up with a case manager connected with public health who, like us, was working diligently trying to find ways to improve his situation until he received his next cheque. In speaking with the case manager, I was shocked and appalled when I was invited to form a game plan that would entail coercing this man into staying at the hospital until his cheque came in.

"It was thought by this well-intentioned case manager that he needed to be stabilized on some sort of medication." What other reason would he be on the street, right? "Fortunately, I work in an organization that believes like I do, that if he had enough presence of mind to come for help in meeting his needs, he did not need saving from himself through hospitalization, but needed services that would help him to meet his self-determined needs. The proposed action of the case manager, in our opinion, would have had a tremendous impact on the delicate balance he already had within the community and the system.

"It was during this shocking experience that I realized and was once again reminded of how the present system had failed me in my own process and continues to fail us today. In my own experience, like this gentleman, I knew what I needed and had very little options. For me, hospital was not the way I wanted to go. So I found myself bumping around in the mental health community only to find that the services I felt I needed would cost me more money than I had."

"What I see in the reform is a shift away from the institutional sector but not enough going back into community resources. What is needed is more resources to provide safe housing and job opportunities for people as they deal with their life issues. The amendments to the Mental Health Act should not happen. Everything in it already protects the civil rights of friends, family and the community, as well as the individual. Yes, there are times when an individual should be detained so that they cannot harm themselves or bring harm to others, but the Mental Health Act already does this with the rights of the individual still intact."

This was already said by Michael Bay, something this ministry already paid for, to go around and educate people and to discuss the Mental Health Act. This is something this ministry already paid for. Somebody's out there saying that we don't need to have the changes. All of the things are in there.

Along with these thoughts, I would like to express my disagreement with the inclusion of community treatment orders to the Mental Health Act. In my opinion, this would be a form of correction that says individuals have no right but to follow the middle-class mindset of what is good or bad behaviour.

If community treatment orders come into effect and are coupled with ACT teams, I fear that the teams will become not only hospitals without walls but a new breed of community police, instead of doing what they should: acting as trust builders who give support to the idea that people can be self-determined and can be active in their own process, as well as bridge builders to jobs and safe homes in the community.

To close, I wish to read a letter to the editor in our local newspaper on April 6 from Dr Ed Pomeroy. He expresses the issues in a very succinct way:

"Your recent ... articles on whether the government [should] be able to force treatment on the mentally ill would have been much more informative if it had been framed as, 'should the government continue to be allowed to neglect the mentally ill and pass off the need for forced treatment as a sign of caring?'"

"In instances where the community commitment orders are in effect, they have been shown to be effective only when an elaborate network of concerned and committed support workers are available to enforce them.

"In these same circumstances, there is little need for community treatment orders because the seriously mentally ill are supported and cared for in contexts that are appropriate to their individual circumstances.

"The government sent its own very competent expert, Michael Bay, around the province last year and he quite convincingly demonstrated that existing legislation enabled all the intervention that was appropriate and necessary.

"The current move by the government is no more than a sleazy effort to"—I didn't write this; I missed the word sleazy—"direct attention away from their incredible neglect of the community mental health system. They would like us to believe that there is some system in place that can solve the problem if people would just use it.

"In reality, there is no such system.

"Hospitalizations and medication are helpful to many people and many people use those resources willingly. When the possibility of forced treatment exists, however, many who might use the system become fearful of losing their rights and delay seeking help.

"Many of those who resist help in spite of much pressure are persons who have learned that what we have to offer does not help them.



"We must respect this fact and seek to provide help in ways that do not cause further injury. Community committal does the opposite of this.

"It is repressive and counterproductive, driving a wedge between those needing help and those offering help."

I can back this last statement around driving the wedge. In my work, I've had many members of Oak Centre come to me, as I was collecting the information around this stuff. A lot of people, reading the things in the paper and stuff, were coming to me and saying: "I'm not coming here any more, because you guys are going to get slanted into this. You guys are going to be doing the community treatment orders, so I'm going to have to come here. I'm not coming here."

What an impact it has on you, when you think you have this trusting relationship with a person and you're working on goals. It's difficult to have that kind of integration in communities; it's difficult to deal with the stigma. But to have as part of my job this wedge in my relationship with these people, and that they're going to be fearful that I have to maintain a community treatment order or be part of this, is terrible. It's awful. I work every day at trying to build relationships and trust with people. I can't imagine being put in a position where they're going to be afraid of me, that people are going to be afraid of me. It's difficult. I'm speaking as myself, as a consumer-survivor; I'm not just speaking as a provider in the community.

I don't usually say this. I don't usually bring this out. It's even difficult for my family to deal with the idea that I come out as a consumer-survivor. For my own brother, hospital was a part of his wellness. It was self-determined, but we had to wait for a long time before he would take that step. We waited, and we were scared for him. We were afraid for his life a lot of times. We didn't know what was going to happen. If we had just forced him into the hospital, how would that have impacted on his life? What kind of trust would he have had for me and my family?

The other part is that I have two cousins in the same family, and they are both living with schizophrenia. I've had the opportunity to talk to my aunt, who struggled with the loss of her sons. To see them come back—one has a more difficult time. He struggled and has many more barriers to face. He's with her. They've tried every route. When he didn't want to take medication, she opted for trying holistic kinds of medications. They sorted things through together. I asked: "What would have helped? What could you have done?" She said, "The only thing I could have done is keep him close." How do you do that when you put a community treatment order on a person?

Thank you for listening.

**The Chair:** Thank you very much for your presentation. That leaves us about 9 minutes, so three minutes per caucus. This time the rotation will start with the New Democrats.

1110

**Mr David Christopherson (Hamilton West):** Thank you for the opportunity to join the committee as we travel around the province. Thank you for your presentation. It takes a lot to talk about your personal experiences, but it's very helpful to us in considering the issues at hand. So thank you for that.

I know from my own experience, both personal and as an elected person dealing with this issue in the community, that one of the big concerns from a survivor's point of view is the notion that, as you say on page 3: "In my opinion this would be a form of correction that says that individuals have no right but to follow the middle-class mindset of what is good or bad behaviour." The concern, of course, is that in a free society we all have the right to live our lives the way we choose within the laws, and acting weird is not something that is prohibited. If it were, half the members of the Legislature wouldn't be allowed to sit there. There's always a concern that something that is seen as different or strange becomes fearful, and then we use the force of the law to take it out of our sight, because it's disruptive. I assume that's why you use the term "middle-class mindset."

The proposal has two criteria. The second one, with regard to behaviour, is (a) a person causing himself, herself or another person serious bodily harm—to cross that threshold—or (b) substantial mental or physical deterioration of the person, or (c) a serious physical impairment of the person. Can you give us an example, especially if you've experienced it but one you can imagine, of behaviour that would be unusual, strange, eccentric—characterize it any way you wish—that you fear would cause someone to cross one of these thresholds and have them under a community treatment order when, in your opinion, that's really not called for? Could you help us envision that?

**Mr Lauzon:** You have a very long question.

**Mr Christopherson:** I'm like that. You're lucky: At least I wasn't loud.

**Mr Lauzon:** You addressed the idea of the "middle-class mindset." I thought about that as I was getting dressed this morning. I thought, "My God, I don't think I have the clothes for this." I looked through my closet and I needed to find it. I was trying to fit into the middle-class mindset, to try to fit into this group. I don't wear this kind of clothes every day. It gives you a picture; it gives you a frame. When I look at everyone around the table, I wonder how many of you have had to even—and I don't even think my circumstances were that bad when I was homeless and living in a trailer and had to move 11 times in five years. Is that unusual behaviour? I don't know.

When I look at you, I think, "OK, you have a very nice suit on." But if you started coming in to work and you had the very same suit on for two weeks, is that eccentric? Is that unusual behaviour? What mindset am I looking from? I'm looking at you and I think, "Hey, you're looking really good." But two weeks from now, when you're wearing the same suit and you're starting to smell, maybe that's a little bit of unusual behaviour. Does



that allow everybody else to look at you and say, "Hey, you need to either clean up or we're going to slap on a community treatment order, because we think you're deteriorating"?"

How are you defining it? That's what I want to know. You need to define it. It depends; it always depends. That gentleman I met on the street—it's all he could afford. He really had no clothes. He had all his bags and everything else. Is that unusual behaviour for a person who actually just lives on the street? He wasn't doing anybody harm when that case manager came to me and said, "I think we need to stabilize him." He had wonderful stories. If you listened to this man, he had beautiful stories. He knew people. He would look at people and he would tell you all about yourself. I don't find that unusual behaviour. She did. That's what makes me afraid.

Who are you putting in power? Who are those case managers going to be? Who are going to be the decision-makers? What kind of life did they have? Is it fair to make them do that? I don't know. You need to decide. Do you want to do this? You guys are making this kind of decision that's going to directly impact on people's lives, and you'll be entrusting this legislation to be acted out by people you don't know, who are also going to be making decisions on people's lives and who are also going to be implying unusual behaviour. How much observation do you need before you can really define it? That's what I want to know.

**Mr Clark:** You're right. We're looking at legislation that is going to impact and affect lives, and that's the intent of the legislation. How do we address, for example, the numerous families who have contacted my office? I can think of one lady whose son was schizophrenic and in a revolving door. He would go into the hospital, get treatment, get stabilized, come back out and, within a month or two, refuse to take the medication, and back and forth. She consistently cried out for help. He'd go into the hospital, be stabilized, released back out and around and around. He jumped into Devils Punch Bowl and killed himself.

The community treatment order in itself is designed specifically to help people like that, so that when they're on their medication they are stabilized. All the resources we're talking about are providing that; it's a consent-based model. I hear what you're saying about the analogy of the clothing and about what's appropriate or normal for me may not be normal for someone else.

**Mr Lauzon:** That's the steps leading into it.

**Mr Clark:** We're not talking about that. We're talking about people whose psychiatrist is stating are a danger to themselves or a danger to others. We're talking about that young man who jumped into Devils Punch Bowl, whom we should have been able to save, but we didn't. How do we address them when they refuse the treatment?

**Mr Lauzon:** When you bring a person into hospital to stabilize them, you get them on medication and all that other stuff, then they're released, right? How much effort

and how many resources are put into connecting that person in the community? How many resources are put into breaking down some of the stigma and breaking down some of the barriers so that person can have a job? It's sad to see that there is loss, but that's not for all the people.

You guys are making this decision. It's really unfair when you think that the media take one story and you see all these other stories, right? Then it makes a generalized notion of what it is. You're talking about what happens and how we can have some effect on that person so he doesn't jump into Devils Punch Bowl. But how many times was he disappointed that there wasn't a whole hell of a lot coming out of the hospital?

**Mr Clark:** With respect, there are cases right across the province. When we were in Sudbury, there was a situation where a schizophrenic killed his parents—20 years of revolving door, where they would stabilize him. He had counselling. He had vocational help. He refused to take his medication.

**Mr Lauzon:** But this is not the majority.

**Mr Clark:** Exactly. We're trying to help the small percentage.

**Mr Lauzon:** But the legislation you're proposing is going to be blanketed across everyone.

**The Chair:** Thank you, Mr Clark.

**Mrs Bountrogianni:** I hear you loud and clear. And if there's that kind of fear out there, I think we have to really make sure, whether it's with preambles the way Mrs de Villiers did with the other act, whether it's very clear legislation, whether it limits—it will be limiting, as far as who can give these orders—we have to make it very clear so that your fears are allayed. But I do hear you and, again, as a psychologist, the hardest sentence I had to say was, "Everything here is confidential, except if I find there's harm to yourself or to someone else." You know that right away they tighten up and don't trust. But then it's my responsibility to win that trust regardless, you see? So, please, I hear you and I'll be vigilant in looking at the language, as a professional as well as a legislator. But at this point, I believe, unless it can be proven to me that your fears are unfounded—I understand why they're there, and I agree with everything you're saying about resources and the stigma of mental health, and I speak both from personal and professional experience.

The way it's written, I don't believe it will be blanketed across. This is more of a point than a question, although if you want to comment, please comment. We will be looking at the language vigilantly.

**Mr Lauzon:** You say it's not going to be blanketed. How can you ensure that? It goes right back to who's looking at it. Who's looking at it? How do you know? It's like saying: "We're always struggling to have valued resources put into the hands of consumer-survivors, because they're the ones who are using the services. Why shouldn't we have access to those valued resources to make those decisions?" I don't see enough of that. I see it as a top-down approach. What about the people who



should be involved in this? You can't say this is only going to happen for a chosen few. Do you mean there are going to be rules? How are you going to manage that?

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**Mrs Bountrogianni:** I actually can relate to that. Even the safe schools stuff in the schools—different principals suspended different kids for different reasons. They didn't have the same level of tolerance, and I think that's a similar analogy. How do you ensure the same level of tolerance? That's why we have to be very vigilant and continuously vigilant, not just write the legislation and then leave it alone; I can assure you that I will be throughout the process.

**Mr Lauzon:** I'm reminded of some money that kind of came our way in the Niagara region—it was kind of all over the province. It was out of the Opportunities Fund money; I don't know if you've heard about it. It's HRDC money. But one of the occurrences that happened was, all this stuff was written out and they had the eligibility criteria and all those things that were put into it and everything else. Everybody in the whole province got money—pockets all over the place. One big problem: Everybody had a different interpretation. How will you deal with that?

**Mrs Bountrogianni:** Good point.

**The Chair:** Thank you very much, and thank you for coming forward and making your presentation today. We appreciate it.

#### MENTAL HEALTH RIGHTS COALITION OF HAMILTON-WENTWORTH

**The Chair:** Our next group is the Mental Health Rights Coalition of Hamilton-Wentworth. I wonder if they could come forward please? Good morning, and welcome to the committee. Again, we have 20 minutes for you to split as you see fit between presentation and question and answer.

**Ms Deborah Sherman:** My name is Deborah Sherman. I want to thank you for making the copies. It's not in our budget.

I've come to this consultation wearing the hat of executive director of the Mental Health Rights Coalition of Hamilton-Wentworth. I have to tell you that that's a new hat for me, one that I only put on about six weeks ago. My purpose here is to speak on behalf of the members I work for, many of whom I've not yet met. Like any new hat, this one is still a little tight. It feels a little different, because I've worn a few other hats. I sat for nearly 13 years as a community member on the Consent and Capacity Board in Ontario, so I'm fairly familiar with the three existing acts that some of our members have had applied to them from time to time. In some cases, I may very well be one of the people who applied it to them.

I have also worn the hat of a concerned family member of someone with a mental illness. Finally, I have worn the hat of a consumer. So, although I'm here to represent the consumer perspective, it's inevitable that

when I look at this legislation, I can still feel some of those other hats on my head.

The Mental Health Rights Coalition is a consumer-survivor initiative. Our mission is to enable, empower and encourage the voice of consumers of the mental health system. Our aims and objectives are to reduce the stigmatization of mental health consumers, to reduce their isolation, to increase the accessibility of services, to support reintegration into the community and to promote their participation in society, in our organization and in their own lives.

The coalition attempts to do these things by educating—we educate consumers, families, care providers and the public. We provide peer support and advocacy, we support research, we participate in the mental health planning processes in and around the city and we provide a place where consumers can come to socialize with their peers in a non-clinical, non-judgmental, safe and supportive atmosphere.

Our membership currently exceeds 425 people, all of whom endorse being consumer-survivors of the mental health system. We have diversity in our membership, although I must say it is a bit weighted at one end. We have cultural diversity, socio-economic diversity and educational diversity. For some of our members, the condition or illness they suffer from is pervasive to the point of being a visible disability. Others have good jobs, nice homes—and who's to know? Some of our members can't read and others have one or two degrees. Some have a lot to give and others are very needy. Some have amazing social skills and others can be troublesome to deal with now and then.

What I'm saying is that our members are as diverse as any other group of human beings. The one thing that they have in common with each other and that sets them apart from others is that they live with the challenge of some form or degree of mental illness. The other thing they have in common that sets them apart from most of society is that they all accept that about each other and don't hold it against one another.

It is difficult to represent the consumer perspective, because there is no single consumer voice to represent. I've been listening to my members, my government, the media and the general public talk for the last six weeks about this legislation, and I've learned that the consumer-survivors have as many different opinions on what was promised as any other diverse group of people has. For my own part, I've tried not to form any opinions until I could see what the act says for itself.

When I say that there are as many different opinions as there are people, I'm saying that some of our members are for community treatment orders. Some of our members are for non-voluntary committal. Some of them are very much against it. It's important to realize that there are people who are saying to me, "I wish they had had CTOs when I was acting up and gave my family a bad time." I've got other people saying to me, "If my brother had the opportunity to use a CTO against me, my life would be hell." There are different opinions.



There are many items in the actual draft legislation which mental health consumers are going to find objectionable. Several parts are ambiguous. Some parts seem to contradict others. Several are just plain impossible to practise in the real world. Some may contradict basic human rights and principles of law. I know what some of the other speakers have to say about those things and I'm not going to go too far into them.

For me, when I finally got to read the draft, the first and single most objectionable and disappointing thing for any mental health consumer about this legislation is in the first five words of it, "An Act, in memory of ...." Naming legislation after any single person is a very American way of doing things; it's a very PR approach. It's difficult to trust the intentions of legislators, no matter how well-meant the legislation is, when they choose to package a law and send it to market that way. I think that in Canada we prefer our laws to be approached a little more soberly.

There are those who have argued that this particular legislation is a knee-jerk reaction to a few high-profile tragedies that aroused public outrage. The title of this law and the choice of a victim connected with the media can only lend credibility to their argument. It taints the legislation with a strong odour of stigmatization. If the authors of the draft had to name the law after a person, they should remember that there are far more people who have fallen victim to their own illness than there are victims of people with illnesses.

The newspapers contain far more stories of deaths by suicide, deaths by exposure, deaths of isolated people who can go unnoticed for weeks at a time than stories of people who have mental illness and commit murder. By attempting to exploit one tragic victim's name under the guise of doing that name honour, the authors of the draft may be doing dishonour to countless tragic victims whose name no one remembers.

In reading the text of the act, the tribunal hat inevitably came on for me, and I could picture the many problems that are going to come before the CCB if this law passes as it stands. I can see a contradiction between the criteria for application for a psychiatric assessment and the criteria for a treatment order.

Under section 33.1, the criteria for an order say, among other things, "A physician may issue or renew a community treatment order under this section if," and then the act sets out some conditions under (a) and (b). If you look at (c)(ii), "the person meets the criteria for the completion of an application for psychiatric assessment under subsection 15(1) or 1(1) where the person is not currently a patient in a psychiatric facility." If you continue down through the ifs, at the end of the clause, you'll see the word "and" followed by the criterion that, "(f) the person or his or her substitute decision-maker consents to the community treatment plan."

So the person who meets the criteria for an assessment under subsection 15(1) must now turn around and consent to the plan. If you look at subsection 15(1) below clause (b), you see that it says, "and if in addition the physician is of the opinion that the person ... (e) is

apparently incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment ...."

If the criterion for a treatment order is the same as that for an ordered assessment, then the person who is deemed not to be competent to consent to treatment is being asked to enter into a consensual agreement. I think you need to change the wording in clause (f) and maybe eliminate the person and leave it all up to the substitute decision-maker.

Likewise, the criteria for an order subsection 33.1(2) say that "within the 72-hour period before entering into the ... plan, the physician has examined the person and is of the opinion ... that, ...

"(ii) the person meets the criteria for an application for ... assessment," and

"(iv) the person is able to comply with the community treatment plan."

#### 1130

Once again, this person who is deemed incapable of consenting to treatment is not only entering into a consensual agreement, but now he's supposed to be able to comply. Furthermore, in the other provisions for the content of the order, clause 33.1(4)(d) now asks this incapable person to give an undertaking to comply with an order they've consented to while incapable. It's not making a whole lot of sense.

Again, in the criteria for an order under 33.1 the physician must be of the opinion that, "(v) the treatment or care and supervision ... are available in the community." What we want to know is, is the doctor just of the opinion that the services are available or is he supposed to make certain?

Under 33.5, it says he's "responsible for the general supervision and management" and that any others who agree to provide treatment are responsible.

Under 33.7, the treatment order must name all the people who agree to provide treatment. This includes, under 35.1, any regulated health professional, social worker or any other person, all of whom may share information about this person. So he goes out into the community with a treatment order to protect him and to protect society from him, and this order tells him that he must attend certain medical appointments and programs.

To ensure compliance, section 7 says that copies of the order will be given to him, his decision-maker, where applicable, and any other health practitioner or any other person named in the plan, all of whom are responsible for providing care because they agreed to this plan.

Unfortunately, the patient and the substitute decision-maker are the only ones who have to undertake to comply, and although they are responsible, section 33.6 absolves all the treatment providers of liability for any default or neglect by the other treatment providers. Nowhere is there any mention of any liability for default or neglect of the plan by anyone other than the person, who is to comply with a treatment plan that he or his caregiver consented to, which could only be initiated after he'd been first found incapable of making that consent.



If you put on the consumer hat and look at that person's situation, there he is in the community. He's expected to comply with an order that says he'll attend appointments and programs, and to ensure his compliance a number of people have to be informed and have to agree to provide certain aspects of that plan. What's missing are the resources, as we've heard from other presenters, the things that help overcome those practical day-to-day impediments, like having enough money to live on, let alone get around the city to attend these appointments, simple impediments like being by nature of your own illness disorganized.

A few years ago, the Mental Health Rights Coalition advocated on behalf of people with mental illness to provide them with free bus passes. That's a necessary element to their compliance with treatment. Lately, there's been some cutting back. I have people walking into my office with forms that need to be signed and letters that need to be written, showing some worker at some agency somewhere that this person is a member who is attending our premises to do volunteer work or to partake in psychosocial rehabilitation. They need these things signed in order to deserve that bus pass.

One of these forms that I saw recently looked very much like a typical work schedule. The social worker or whoever it was had filled out days and times that this person was to be at our premises volunteering. Aside from the fact that we have work to do, I have a philosophical problem with filling out these forms. It suggests that someone thinks people with mental illness don't deserve to get around town unless they're doing volunteer work. God forbid that they should be taking the bus for social purposes. They need to be out there putting something into society—the same one that asks them to live on next to nothing. But there's a greater problem with this.

My peer support coordinator came to me a little while ago when I was looking at one of these forms, and said that the young person who brought in this form suffers from frequent recurring bouts of severe depression, suicidal thoughts and behaviours; he's been hospitalized many times. He has low self-esteem and easily triggered guilt.

For him to have his bus pass, he is pressured by a third party into making a time commitment to us. We are not comfortable with that, because we know that letting people down is a big issue for this guy. We have to keep telling him that it's OK if he doesn't feel like coming in. We don't want him back in hospital because someone else is making him feel guilty about his commitment to us. Whoever the person was that made out the form is obviously concerned with ensuring that the bus company doesn't get ripped off. The person has no concept of who he or she is dealing with and the kind of pressure a simple little thing like this schedule is causing for the person.

This is only one person, only one practical example; there are many. When community treatment orders come into effect and people's liberty depends on complying

with them, they're going to need greater access to all kinds of supports, like free bus passes, free recreational and rehabilitation services, medical costs; you name it, they're going to need a lot of support. To ensure these things are available, the doctor issuing the order is supposed to secure the agreement of everyone named in the plan. So suddenly the patient's life is an open book to all of these people—not just health care providers, not just the social workers, but like the act says, any other person, like the ones who come up with these volunteer work schedules.

We are very concerned for the benefit of our members and all people with mental disabilities, if they are going to be forced to have their needs met by bean counters who have no sensitivity whatsoever to what they are dealing with, and no idea that what they are asking for should not be asked of certain people.

The greatest problem of all in the act is that it opens the doors wide to all kinds of abuses, not just systemic ones like the example I just gave, but intentional and malicious ones as well. Anyone with a history of mental illness, regardless of their current condition, can be reported to the police by family members, neighbours or anyone else who says they are behaving strangely. The police are no longer required to observe the behaviour themselves; they can act on the information and take the person to hospital.

If the person in question happens to be under a CTO, then the police are to take them, as the act says, into custody—it doesn't say what sort of custody—and they're supposed to bring them promptly to the physician who issued it, who is likewise to see the person promptly.

I don't see physicians responding to calls in the middle of the night, on weekends or on holidays, unless they happen to be in the hospital at the time. There's no point in taking the person to the emergency psychiatry if there is no emergency behaviour being observed. The officer is stuck with the option of staying at the hospital or taking the person into some other kind of custody.

Police officers in a community policing system are keenly aware that the public is not being protected if they are sitting around cooling their heels at EPT for half their shift. If there's no behaviour to indicate a psychiatric emergency, but there is a CTO and there is a report by a third party, then what sort of custody option is left to the officer? The only thing that comes to mind is the Hamilton-Wentworth Detention Centre. For how long? You want to hope your neighbour doesn't choose a statutory holiday weekend to report you for acting weird.

The act does not address the issue of responsibility or liability for a person who, through self-interest or malice, or because of their own illness or just plain ignorance, might make a complaint or report against someone who happens to have a history.

These are just a few of the things we see in the act. There are many more that we have not been able to address because of the short notice of this consultation, but I am sure they will be addressed by other presenters.

I thank you for your time and attention. I want to reiterate that I'm not here to take a stand against com-



munity treatment orders or against the act. I'm simply saying that consumers, like everyone else in society, have a wide variety of opinions on it and a wide variety of feelings on it, and that the act, as it is written, does not guarantee safety and does not guarantee that the right people will be put into the right programs and given the right supports.

**The Chair:** Thank you very much. You've left us with about 50 seconds in your time.

**Ms Sherman:** Oh, good.

**The Chair:** Recognizing that neither my colleagues nor I would be able to give our name in 50 seconds, never mind ask a question, if you care to elaborate on any particular point?

**Ms Lankin:** Actually, Mr Chair, I would like to ask for unanimous consent. I'll give the reasons why. Given that current members of the Consent and Capacity Board have, and I think appropriately, been directed not to appear before this committee because they have to adjudicate the results of this legislative change, this is a rare opportunity to have someone who spent 13 years on that committee. I'm wondering if we could at least have unanimous consent for one question from each caucus, although I'd like much more. Perhaps we could shorten our lunch just a little bit to accommodate that.

**The Chair:** We've already had a request that would take us a few minutes into lunch break, and another gentleman who has asked that if there was a gap—I don't think there will be.

**Ms Lankin:** This is a request for one question. If we stop talking, we might be able to have lunch quicker.

**The Chair:** I'll tell you what. We'll grant one question to the New Democratic Party.

**Ms Lankin:** He's so accommodating. I'm just amazed. OK.

**The Chair:** This is the old Steve. You just didn't ask the right questions in the right tone.

**Ms Lankin:** Thank you very much, Mr Chair.

There's much I would like to ask you, but I specifically want to reflect your experience on the Consent and Capacity Board. Some of the other amendments in this legislation are actually to the Health Care Consent Act. We're not having much discussion about that here today.

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One of the clauses allows for a person responsible for authorizing admission to the care facility to apply to the board to obtain permission for the substitute decision-maker to consent to the admission despite the wish. In other words, if a person makes prior capable determinations about their life, this now allows a care facility to apply to overturn those prior capable wishes. Of course, "care facility" is defined in the current legislation and it covers charitable homes, nursing homes, but it also covers rest and retirement homes.

One of the things we need to take a look at is that there isn't an inadvertent effect of the legislation. I'm thinking about psychogeriatric patients in the community, the lack of resources that currently exist in the nursing home and regulated sector and the number of people who

end up vulnerable in the unregulated sector without substitute decision-makers. In this situation, we're giving new powers to the care facility to come to seek to overturn prior capable wishes. There are many other questions I would have, but let me put that one to you. Do you have a sense, does that open the door broader than perhaps what this legislation should be concerning itself with?

**Ms Sherman:** It may. I know that with a lot of patients who came before the review board, the argument often was, "They need to keep me here because they need the bucks." We all know that most places are filled to capacity and that there are plenty of replacement patients. I guess there is some room for abuse in some sectors, but I don't see the Consent and Capacity Board as letting something like that happen if they become involved. The Consent and Capacity Board would recognize if there was a self-interest involved, if that's what you're getting at.

**Ms Lankin:** I guess I was wondering why we are putting in place the capacity for the care facility to do this.

**Ms Sherman:** I imagine because there may not be anyone else, especially in the case of, as you said, psychogeriatric patients. Quite often there is no one else and quite often there is no one else willing.

**Ms Lankin:** Which brings us to the role of the guardian's office. That's another question for another day. Thank you.

**The Chair:** Thank you very much, Ms Sherman. I appreciate you coming forward and bringing your perspective today.

#### PROVINCIAL ACQUIRED BRAIN INJURY PROGRAM OF THE HAMILTON HEALTH SCIENCES CORP

**The Chair:** That brings us to our next group, the Hamilton Health Sciences Corp acquired brain injury program, if they could come forward, the representatives from that group. The clerk advised me they are here. Good morning. Just a reminder that we have 20 minutes for your presentation this morning for you to divide as you see fit between presentation or question-and-answer period. Perhaps, since there are more than one of you, you could introduce yourselves for the purposes of Hansard.

**Dr Diana Velikonja:** I'm Dr Diana Velikonja, neuropsychologist in the acquired brain injury program at the Hamilton Health Sciences Corp.

**Ms Patti Leonard:** I'm Patti Leonard. I'm the program director of the acquired brain injury program at Hamilton Health Sciences Corp.

First of all, I'd like to thank you for inviting us to be here today. It really is a great privilege to be here, and I'd like to applaud the recommendations that I have seen in this most recent mental health reform legislation that you're proposing.



Let me just take a few minutes to go over our brief. I was just reading it out in the hall and I noticed that there are a couple of typos, so I do apologize for that.

In the existing Mental Health Act, a mental health disorder is defined as any disease or disability of the mind. Individuals who suffer the sequelae of an acquired brain injury resulting from trauma to the head, disease caused by conditions such as stroke, lack of oxygen to the brain, infections of the brain or space-occupying lesions such as tumours frequently exhibit disabilities in cognitive functioning and behavioral control while retaining intact verbal reasoning abilities.

Dr Stephen Hucker, forensic psychiatrist from the Hamilton Psychiatric Hospital, recently presented important issues related to consent, capacity and responsibility for criminality at an acquired brain injury conference. In his presentation, Dr Hucker cited several non-psychiatric personality and behavioural changes that result from an acquired brain injury. They include: increased anxiety and agitation; depression, mood swings and apathy; poor impulse control; irritability, aggression and rage; lack of self-awareness; social disinhibition; denial of deficits, which is the inability to appreciate the fact that deficits exist; delusions and paranoid thinking; malingering and somatisation; and drug and alcohol misuse. Dr Hucker further cited statistics that indicate 70% of those suffering from severe traumatic brain injury experience significant aggressive and irritable behaviour. It is estimated that approximately 67% of inmates on death row in the United States have an identifiable diagnosis of brain injury.

According to the Ontario Brain Injury Association and based on information obtained from Statistics Canada in 1996, approximately 16,948 Ontario residents experience a traumatic brain injury each year. Of those, approximately 4,000 die, while 1,465 are considered to have suffered a severe traumatic brain injury, another 1,205 have suffered a moderate brain injury and 11,053 have suffered a mild brain injury. These numbers, however—and I think this is important to recognize—do not include non-traumatic brain injuries, those experienced due to cerebral vascular accidents, disease etc.

It is our intention not only to inform this committee about the large number of Ontario residents significantly impacted by brain injuries, but also to raise your awareness of the challenges presented to caregivers, families and society resulting from the lack of specific inclusion of this population into the Mental Health Act. Consequently, decisions from the consent and capacity review boards have failed to provide the individual with a brain injury adequate provisions for treatment, and thus fail to afford adequate protection for the individual and society.

By way of illustration, we are providing a number of case examples to highlight these issues. I won't read them all, but perhaps I'll at least read the first one, because I think he really provides a good example of some of the typical problems.

Case example 1: Male, age 40, 15 years post-traumatic brain injury. You might be interested to know he spent

several years in the United States in an acquired brain injury program. He is physically independent, with some balance and gait problems. He lacks insight into his behavioural dyscontrol and denies his deficits. His verbal skills remain intact and he has above-average vocabulary. Thus, based on his verbal-conversational presentation, he gives the impression of an individual with insight and appreciation of the consequences of his actions and the capacity for behavioural control. However, due to the nature of his brain injury, he is unable to execute appropriate behaviour when he is actually faced with normal daily situations. This individual has had numerous and lengthy admissions to specialized ABI treatment facilities. Community integration attempts have been unsuccessful, as this individual, deemed competent, refuses to accept the support he requires to live in the community.

His actual behaviour demonstrates that he is a high risk to himself and others through acts of physical violence when confronted by any normal demand. He further offers to babysit small children despite a history of aggressive behaviour towards them. His behaviours include verbal and physical aggression, suicidal gestures such as walking in traffic, bizarre rituals including urination around territory, and hoarding items such as food and garbage.

Repeated efforts to have this individual deemed incompetent have been met with reversal of his involuntary status at Consent and Capacity Board hearings due to his excellent ability to verbalize adequate knowledge, despite a brain injury that prevents him from carrying out this knowledge behaviourally. On the street, this individual experiences significant difficulties with behavioural control and poses a threat to himself and others within 24 hours of release.

I invite you, at your leisure, to read the other cases. Many individuals with acquired brain injury do not have a psychiatric diagnosis as their symptoms are not encompassed by these diagnostic criteria and are treated and cared for outside of psychiatric facilities and mental health agencies. Hopefully these examples provide you with a sense of the challenges we face in providing support to ABI populations when they present with severe behavioural difficulties.

#### 1150

The deficits of individuals with an ABI typically encompass cognitive difficulties, often resulting in behavioural problems as a result of frontal lobe damage that impacts to varying degrees on their ability to appreciate the impact of their actions. These individuals can articulate a verbal understanding of the circumstances being presented to them, but the impact of the brain injury prevents them from acting in a manner congruent with their verbal abilities. Cognitive impairment such as perseveration, impulsivity, cognitive inflexibility, attentional problems, and poor planning and judgment impede their ability to behave in a manner that is safe or functional.

While we recognize that there is considerable controversy regarding the potential restrictive nature of Bill



68 if inappropriately implemented, for some severely brain-injured individuals this bill has the potential to create less restrictive community living options. For many individuals, the cycle of repeated hospitalizations and incarcerations for behaviour resulting from frontal lobe damage is sentencing them to a life of unnecessary restrictions. For these reasons, we would like to make the following comments on the proposed changes to the bill:

We support the removal of the word "imminent" from the current committal criteria to increase the flexibility in engaging patients in treatment.

We support the development of community treatment orders for people with serious mental illness, but request that the category of acquired brain injury explicitly be recognized as a disease or disability of the mind under the Mental Health Act.

We support the removal of the requirement for the police to observe disorderly conduct before acting to take a person into custody where police have reason to believe that their behaviour meets committal criteria.

We support changing the definition of "attending physician" to include "any duly qualified medical doctor." However, a provision should be made for a requirement that the qualified medical doctor be familiar with the implications of a CTO.

We would recommend that consent and capacity review boards be required to examine neuro-cognitive information in conjunction with psychopathology when dealing with an individual who has a diagnosis of brain injury. This will facilitate the incorporation of the cognitive limitations that may impact on an individual's capacity to make safe and responsible treatment decisions.

In addition, we pose the following questions to the panel members:

What role do you foresee for the Consent and Capacity Board in relation to CTOs in terms of reviewing the appropriateness of the orders?

To ensure appropriate application of CTOs, what training will be provided to physicians?

Finally, how will the CTO be applied to individuals who are not in schedule 1 facilities?

Thank you very much.

**The Chair:** Thank you very much for your presentation. That leaves us with about seven minutes, so just over two minutes per caucus.

The questioning this time will start with the government.

**Mrs Munro:** I certainly appreciate what you have brought to us today—obviously a different perspective, given the people that you're talking about.

As I listen to you—and obviously in the context of the other presenters perhaps what we should be talking about—you ask for specific inclusion and support for community treatment orders and other people have a great deal of fear around them, I'm just wondering if you have any comments to make to that issue of the problem always of a legislator being all things to all people. I think you demonstrate in your ideas here, as I say, in

contrast to some of those we've heard this morning, that issue. I just wondered if you had any comments yourself, I assume having heard some of the concerns raised by others. Do you see some specific recommendations that might alleviate those fears that have been expressed by other people?

**Dr Velikonja:** I think the important thing will be the criteria. One of the important things we're advocating is that what be reviewed is both the cognitive status as well as the behavioural. We don't want to restrict it to a very simple score on this test or look at this. We think there has to be a combination of things that are looked at and criterion for both, so that they are well defined and so that an individual has to go through a fairly strict process to ensure that they meet those criteria. That's why we've added both, to try to address that issue, because we do appreciate that that's what it would look like, very restrictive.

**Ms Leonard:** I think, as well, the questions that we posed at the end really speak to that sense of criterion. Clearly we're talking about a very severely behaviourally impaired population. We wouldn't see this applying to all individuals who have a diagnosis of acquired brain injury, and that would be very concerning. We are really talking about a population where this type of legislation could actually allow them to live more safely in the community.

We have individuals who are going to end up in jail, and I think that's criminal. This type of legislation has the ability to help us provide support to allow them to live in the community and not get into the kinds of situations that result in repeated and costly psychiatric admissions and potentially into the jail system. Currently we have one individual in our in-patient unit who has been ordered there by the courts, and they don't know what to do with him because he has had about four or five arrests in his community.

**Mr Patten:** By the way, that was an excellent presentation and I thought you made excellent points. I'll have one question, due to the limitation of time, and I will personally take a look at this in far more depth because I think you make an excellent point. I've had some personal experience with this. If we're talking about some people with brain injuries or head injuries, what is your experience? Some of these people do not necessarily need, for example, a plan for medical treatment; what they need are some supports, with an ability to support some positive behaviours?

**Dr Velikonja:** Yes.

**Mr Patten:** In that sense it's different. I'm finding the term CTOs now quite a useless term. It's a generic term, an umbrella term. In some cases it's by the courts; in other cases, and in this particular legislation, it is only by a physician. In your particular instance you're asking two things, that this should be part of a consideration for mental health legislation, as well as consideration of these individuals who perhaps have been misdiagnosed and treatment attempted under another diagnosis that was not correctly applied. Is that correct? Do you have any comments on that?



**Dr Velikonja:** Or people try to get them to fit under certain diagnoses and then that would imply a certain type of treatment which may include certain types of medical treatments that aren't necessary or required, because you've tried to make that depression or something fit into a diagnostic criterion. So in and of itself, you're right, the acquired brain injury category does not specify specific medical treatment that would be unnecessary, which we think is also very important. A lot of our patients come in with medical treatments and so on under those diagnoses that are really inappropriate and actually contraindicated considering the central nervous system damage.

**Ms Lankin:** Wow, you just opened up a whole new area that we have got to take a look at. I recall during the time I was in the Ministry of Health working with your program and with a number of people in the association as we tried to repatriate people from the United States in the beginnings of setting up our own network of programs here. There is so much help that could be here.

There are two things that strike me. First of all, I've been arguing for some definition to treatment plans containing some scope of what must be contained in the treatment plan so that it's not simply what some people I think fear and what some of the apprehension out there is about, that it's sort of chemical imprisonment in the community, and that there be a mechanism for seeking an independent second opinion to challenge some of that, because you're right: There are people for whom medication may be prescribed and it's not the right solution. There isn't an easy mechanism in this legislation to get at that.

I guess I'd like to ask you if you support those concepts, and what is the actual barrier now around the diagnosis of mental illness? What do we have to do in the act to open it up to ensure that people with acquired brain injury are given some consideration of support and help, what the positive intent of the government is with respect to this legislation?

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**Ms Leonard:** I think we talk about having acquired brain injury explicitly, and I use the word "explicitly" because it is buried in there in terms of disease or disability of the mind. One can say an acquired brain injury is that, and that can be argued, but that really leaves it to the interpretation of the particular psychiatrist, potentially, or expert who is seeing the patient. Our experience has been that psychiatrists don't always have an appreciation for some of the issues of acquired brain injury. They're not mental health; they're quite different.

That's why we are encouraging, through this process, to have even "such as acquired brain injury," or to have very clear guidelines put in there so that this population isn't ignored and isn't sandwiched into mental health kinds of rules. When that happens, that's where we fall through the cracks, and that's where we have tremendous problems.

It's lovely to see you again, by the way.

I think the issue we're trying to raise—and I want to go back, because I think your comments are very similar

in terms of the word "treatment" under CTO—is that it's not always medication; in fact, in brain injury sometimes it is and sometimes it isn't. And it's not treatment. As my examples will demonstrate, these are people 15 years and 20 years post. They've had every piece of treatment you could possibly imagine. This is support. This is, how do we put somebody in who will enable them to make safe decisions, to clean up their apartment every day, to buy groceries, to interact appropriately in their neighbourhoods? It's that type of thing, and it may be lifelong living.

**The Chair:** Thank you very much. We appreciate very much your bringing your presentation and your thoughts to us here today.

### CONSUMER/SURVIVOR INITIATIVE OF NIAGARA

**The Chair:** That takes us to our next group, the Consumer/Survivor Initiative of Niagara. I wonder if they could come forward, please. Good morning and welcome to the committee. You have 20 minutes for your presentation.

**Ms Judy Hoover:** My name is Judy Hoover and I'm the coordinator of the Consumer/Survivor Initiative of Niagara. The main focus of our agency is that we are an alternative to regular organizations. We do self-help throughout the Niagara region. At the present time we are supporting almost 2,000 people. We have 12 self-help groups and there's only myself and one other staff to do this.

I am speaking from my experience in my work with the Consumer/Survivor Initiative of Niagara. We are an organization that supports people in our communities who struggle with their mental health, through self-help groups. I have learned many things about how to work with people who experience serious mental health problems. I have learned that we must listen to people and hear what they are saying. Many people say that they want someone to believe in them and they want to be treated as equals. They say they want the same as other people: a good roof over their head, a place to work and to be among friends. We just need to ask what they need.

How community treatment orders help to achieve what people want and will make a difference in their lives does little to make these things happen for people.

Community treatment orders frighten me. It makes some other person in charge of someone else's life. If you ever have the chance to read a novel called *A Mind That Found Itself*, you will read one young man's story of how he was gradually taken over by his psychosis and how his well-meaning family committed him to a series of mental institutions. He was brutalized by the treatment that his family so trusted. He tells his story of how he had fewer and fewer moments of sanity, but finally came out the other end to rise in his own recovery. It is truly a story I hear repeated among the people I work with today. Clifford Beers told his story in 1908.



Do you want to be responsible for imprisoning people in their own communities, in their own homes? People who are already struggling day to day with poverty, stigma and isolation have said many times, collectively what they need: a home, a job and a friend, not forced treatment. We know that having a job makes a difference and prevents hospitalization. We know people want to go to school and they want good people in their lives. The people I know do not want forced treatment.

I came today to tell you what I have heard from people about what they want and do not want. I came to tell you about the fear in the community and in me. I am fearful that you will not hear me and that you will listen to people who have a lot more power than me. My trust will be broken, and the mental health system will be used against us. Please don't let this happen.

**The Chair:** Thank you very much for your comments. That leaves us with about 13 minutes to be divided equally among the caucuses. This time we'll start with Mr Patten.

**Mr Patten:** Have you had a chance to read the legislation?

**Ms Hoover:** A little bit.

**Mr Patten:** I can sense your fear, and I gather there is a fear out in the community and particularly among consumer-survivor groups. Frankly, I find it quite disturbing. I think there's a perpetuation of an extreme mistrust of almost anybody else to do anything when the legislation specifically addresses a very small percentage, an extreme minority within the general mental health population. I've met with various consumer-survivor groups. I'd like to ask you, though, how do you define the term "consumer-survivor groups"? What does that mean?

**Ms Hoover:** For us, it's people who have used the mental health system, who have been in hospital and have survived the treatment that they got.

**Mr Patten:** My experience is that that's a negative, perhaps a negative reaction. I don't know whether it's to the existing system or to a former system. Recalling some of the history, certainly there is deep concern and there is reaction to the abuses that took place. I think those are quite historic. Maybe it happens somewhere today but certainly not as it used to. I find that the consumer-survivor groups have an immediate mistrust. There doesn't appear to me to be any openness of talking about how you treat that specific individual and how you get continual treatment, not just stabilization. The problem I have, and you've seen it especially in this community—you're going to say I'm using extreme examples. I can give you lists of hundreds of people who literally go in and out and they never get treated.

Do you not feel that people have a right to treatment, and that once we can stop this syndrome and not just say, "If you provide them with a job and provide them with a house, provide them with all these supports"—I have friends who work in that field. I used to be in the social field myself. They say: "No, it's not good. You've got to break that syndrome somehow. You've got to find a way." I've met people, and it happens to be more in the

area of paranoid schizophrenics, who said, "Thank God, somebody was able to get me in and do that." People threaten me. A friend of mine was ready to kill me. Afterwards, he said: "Imagine that. I thought you were part of a conspiracy." We had to take him to the hospital and he had to have sustained treatment. Just stabilizing someone and saying, "Now go out," I think is cruel. I think we're condemning that person to eternal mental disability, and with recurring episodes people are damaged.

I ask you, do you not think that there is a circumstance under which you want to break that kind of a cycle? The only way you do it is that there is a dimension of involuntary treatment.

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**Ms Hoover:** For sure I think sometimes people need to go to the hospital. If we're going to talk about people who have schizophrenia, unless you're really listening to them—I know a young man with schizophrenia. He took his medication faithfully. Some of the medications they take actually kill them because they destroy their liver. You think you're doing good for them, but in the end they are going to die with this or something else. This young man killed himself because the medication wasn't working. He told his doctor his medication wasn't working. He said, "The voices won't leave my head, ever." I went to school with him. He belonged to the Clubhouse Oak Centre. He was very well dressed. You would never know. But he couldn't live within himself.

It's sad that he died, but the doctor wasn't listening to him, obviously. If he says, "This stuff is not helping me," it's a shame that he ended up dying. For sure, I think that sometimes people need to go to the hospital. I will disagree with you, though. That treatment isn't happening. I can go to the hospital any time, and people are being tied into, I'll call them high chairs, because I don't know what you would call them. They're tied in there. When they're forced into a rubber room and have no clothes, but I'm walking around the ward and I look at the nurses' station and I can see whoever is in there naked, how demeaning that everybody knows you have no clothes on. I see people still tied to two beds, so I have to disagree that it's not a nightmare.

**Ms Lankin:** I think this is the most difficult part of pursuing legislative changes in this area. There are two worlds of experiences. One is the experience of psychiatric survivors who have something negative—I think Richard is right in making that connection—to say about the system. But my understanding is, because they've lived it and they've come out of it, they've got an experience that we need to hear. We need to understand that.

Then on the other side there are families, in particular families of patients with schizophrenia, the most obvious example—and there may be other illnesses, other disorders or diagnoses that are similar, and I'm not an expert so I don't know—who talk about just the nightmare of trying to get the appropriate treatment. Some of it is because there's not enough treatment available, there are not enough community supports of medical and non-



medical, social, all of that; some of it is because of the nature of the disorder itself and the lack of awareness of the disorder and the denial of the disorder. I've got to tell you I just feel tortured around these two polarities in trying to deal with this legislation.

From your perspective, because we're hearing a lot from the other perspective, can you help us understand, from the psychiatric survivors' community point of view, is there a time when someone lacks the capacity to make these kinds of decisions about treatment and should be forced to have some treatment? Is the fear that people who are capable of making the decision and want to reject treatment for totally legitimate reasons are going to be forced into treatment? Tell me where the fear gap is and how we bridge that as legislators or as people who want to provide the right service to you.

**Ms Hoover:** I can just use myself as a consumer-survivor. When I was in hospital, all the things I'm saying I saw were there and they haven't changed. I feel bad that you're not looking—I'm not saying you. When I have a 15-year-old or a 12-year-old in a psychiatric ward because they're runaways, I don't understand that treatment.

As a human being, I would never, ever like to be forced to go back in the hospital, never, ever like to be forced to take medication. When I'm having a bad time, I know I'm having a bad time and I'll go to my doctor and say, "I'd just like to go back on my medication." They'll say, "OK, how long?" and I'll know, and if I feel better, I just stop taking it. I don't want someone coming to my house and saying, "If you don't take this medicine, you're in trouble." I don't think that's right.

My fear is mostly—"seriously mentally ill" obviously, since 1908, is not a new thing. Why hasn't anybody found solutions? Instead of more treatment, why aren't there more solutions to how to support people in the communities? Having more psychiatrists isn't the answer because, if they're not good, who cares how many doctors you give them? You need to be careful because we aren't a unique bunch. This could happen to anybody. So whatever you're going to put in place, you'd better hope you never end up where I am, because it's going to be you. You're going to make this happen to you. I think a lot of people feel the same.

I'm good right now. I have no guarantee I'm not going to get sick again and I don't want someone taking care of me whom I don't want there.

**Mr Barrett:** Ms Hoover, thank you for your presentation. We hear what you're saying about the concern or the fear in the community about people being forced into the hospital. One goal for these kinds of community treatment orders is to cut down on the requirement for people to be in hospital, an order, again signed by a physician or a psychiatrist, for the person to access treatment in the community. If that doesn't work out, they're referred to the hospital or a psychiatric facility, but they're referred for assessment, not necessarily hospitalization.

My question is, do you have any further ideas on the kind of the flexibility that should be in this legislation so

that there's less necessity for people to be referred to the hospital and more assistance in the community?

**Ms Hoover:** In an assessment, you're just going to give them another label. I could go and get assessments five times and I'll just have five new labels. So what do I really have? Do I have schizophrenia? Am I manic-depressive? Am I bipolar? It's already too much for me. I don't even know what label I'm supposed to be following this time. I already got my medication changed 10 times.

My fear is that you're going to have forced treatment put in the community, and I don't think hospitals should be part of my home. If you're going to force me to have a community treatment order person, I will kill myself because I don't want them there. If you're going to force me to take my medication, which I know is already killing me, then what choice would you—I think you're going to tie consumers' hands. Right now, I don't really feel that the rate of people killing themselves is so high. There are probably fewer people than you think who are actually killing themselves.

**Mr Barrett:** You're concerned with forcing people into treatment. These community treatment orders are based on the consent of the person or, if they're in a position where they can't give consent, they're based on the consent of the person's substitute decision-maker. In addition to that, the physician involved in this order would have to be satisfied that the person has received advice on their rights, and there are other mechanisms. We had a presentation earlier from a person who sits on a committee, the Consent and Capacity Board. So there are other appeal procedures in place to ensure that a person's rights are protected. Do you feel there should be further measures in place to provide additional protections?

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**Ms Hoover:** Sure.

**Mr Barrett:** Do you have any suggestions?

**Ms Hoover:** I already know. I go to support people all the time at the hospital and they say, "I don't want to take this medication." But they've got their nurse beside them saying, "If you don't take this medication, we're just going to just force you to stay in here longer." Then I say: "Well, you have rights. You can get the patient advocate." They make you take the medication before they let you see the patient advocate. There's no choice already. You're already saying, "I'm not taking it." They're saying, "Yes, you are." "I want a patient advocate." "Oh, sure, but you can't see him for three days. Take the medication."

**The Chair:** Thank you very much for coming before us here today. We very much appreciate your taking the time.

SASHA McINNES

**The Chair:** That takes us to our last presentation of the morning session. Sasha McInnes, come forward, please. The clerk indicates you'd like a minute or two extra. We'd ask you to try and stick to that, if you could, please.



**Ms Sasha McInnes:** Good afternoon. My name is Sasha Claire McInnes and I'm an artist. I welcome the opportunity to speak at this hearing.

It is not primarily to you, the committee members, however, that I will be addressing my comments, because I suspect that these hearings are pro forma only and have no meaning in the context of what this government intends to do with Bill 68. In other words, I don't believe that anything I say will change the minds of the MPPs voting on this legislation. It's not just the PC members of the Legislature who are complicit in what I consider to be a repugnant, violent and degrading law but the NDP and Liberals as well. It was, after all, a Liberal MPP, Mr Patten here, who first developed the forced treatment model for Ontario and three NDP governments in Canada have shamelessly already brought it in.

My only purpose here is to ensure that my view makes it into the public record. I will not remain silent while individuals, who are elected public servants, promote legislation that violates the civil and human rights of citizens they are hired to serve. I remind you that you are our employees, and it is our right to confront you when we feel it is necessary. I feel it is necessary. I also want it to be very clear that I feel a lot of compassion for individuals struggling with family members in crisis. I've been there and I understand how very difficult it is to manage. However, this bill is not the answer. The forced and legal drugging of Ontario citizens should be anathema to any civilized and caring individual, particularly so when one considers the apparent hypocrisy with which this government has dug in its heels with respect to another substance, cannabis, that has proven benefits for certain of our citizens enduring unspeakable physical pain.

It's apparent to me that this bill is not at all about caring for the mental health of Ontario citizens. If it were, the enormous amount of tax dollars required to implement the bill would be used instead to develop and strengthen existing services that increase the self-esteem, personal and physical safety, personal dignity, independence, opportunities for jobs and housing and community for individuals who are isolated and in emotional crisis.

What is most pernicious about this bill is that it will allow forced treatment based on an assumption of harm an individual might inflict on self or others at some future date—I repeat “might.” What an incredible display of blatant self-aggrandizement, ignorance, violence and discrimination against a small community of vulnerable Ontarians. You will be aware that the MacArthur study in the US clearly showed that individuals with psychiatric labels are no more likely to commit violent acts than any other individual, and if they do, they most often occur in combination with substance abuse such as alcoholism, crack cocaine or cocaine addiction. Unfortunately, the Ministry of Health has not done its homework with integrity but has been swayed by the odd high-profile case where tragedy ensued.

You will also be aware that current mental health legislation allows action to be taken when an individual

clearly demonstrates behaviour which might endanger his or her life or the life of another. There are also laws against assault, threats and various other criminal behaviours, and if these are not working well enough now, we ought to be focusing on strengthening them. If an individual commits a crime, he or she should be prosecuted for it to the full extent of the law, regardless of whether or not they have a psychiatric label. Too many violent men are claiming mental illness as a reason for their violence and ending up not in prison but in our communities, where they can continue to prey on others. If they are mentally ill and commit a crime, appropriate mental health treatment ought to be available in prison, not in our communities or on our streets. If you intend to get tough on crime, do it, but not on the backs of innocent others who are being scapegoated by self-interest, expediency and lazy thinking.

One also needs to consider the recent data that illustrate the connection between the use of psychiatric drugs and subsequent violent behaviour. It appears to me that whoever drafted this legislation failed miserably with respect to their research or simply had an agenda other than the truth.

My question to you then is, why? Why is this very small, vulnerable group of Ontarians being singled out for “special” treatment at such great financial cost to the public purse? I can only speculate. Is it because distressed family members can no longer cope with the odd behaviour of a loved one and are much more comfortable with a more placid, if somewhat emotionally and brain-dead, relative? They deserve much better than what is offered in this legislation, although one can only question the motives of those who have encouraged it when their organizations and their personal jobs are supported financially by the drug companies. I'm referring here specifically to the Schizophrenia Society of Ontario, its board of directors and staff. Or is it because drug treatment, of which psychiatry is so enamoured today, is a cheaper alternative to concerned and compassionate community supports which allow individuals with emotional problems to find havens of safety, friends, meaningful activity and a home of their own? We don't need to allocate dollars to community resources if our family members are numbed out on psychiatric drugs, right?

Could it be that the multinational pharmaceutical industry, arm in arm with the psychiatric profession, and now apparently governments, has pathologized and medicalized so much of human behaviour and emotion, manipulating us into the belief that all uncomfortable feelings are bad and can be fixed with a pill? For a price, of course, and in terms of dollars, the legal drug manufacturers are making very big bucks off the emotional pain of others. New psychiatric labels emerge weekly, with designer drugs on their heels to feed this greed. Soon all of us will be considered mentally ill because we're human and we feel. I, for one, want and cherish my humanity, and that includes the ability to feel deeply sadness and grief as well as elation, joy and satisfaction. Feelings and emotions are what make us human. We are



not widgets to be fixed and we are not broken to begin with.

It can't simply be that we are so sure of our science that we can predict a potential for violence and, on that basis, usurp an individual's civil and human rights and force dehumanizing, degrading, disempowering and dangerous drug treatment on them. If potential for harmful behaviour is the ground on which this bill stands, there are far greater indicators than some pseudo-scientific judgment about an individual coping with a mental disability. What about a husband who beats his wife? These individuals are known to the courts and are far more likely to commit violent offences in the future. They also commit more murders. How about drunk drivers? They may lose their licences and maybe even do some time in jail, but nobody suggests they should be drugged into a half-life even though they commit far more havoc in society and in the lives of individuals than persons with psychiatric labels. What about men who rape? Should we drug all boys just in case they might, like many of their fathers, become violent as they mature?

Stats tell us that young black men, especially those who are disenfranchised and living in poverty, commit significant violence in our society. Should we forcibly treat them with drugs? I expect, if we were to try, there would be a huge hue and cry from the public, and rightly so. Why is it, then, that a specific group in our community is being targeted by this mean-spirited, bigoted, violating and retraumatizing legislation when only 4% of all violent crime is committed by individuals with psychiatric labels? What about the other 96%? Are you planning on drugging them too?

1230

While I feel deeply for his family's loss, it is very offensive to me that you've chosen to name the legislation Brian's Law. Tell us, please, will you be developing a law called Every Woman and Child's Law because it is both these groups of citizens who are most frequently battered, raped, victims of incest, emotionally abused and otherwise violated and traumatized in today's Ontario, including the loss of their lives to violent men? How can any compassionate or responsible person not be appalled by what is happening in Ontario today?

Nor will this legislation work, as New York has recently discovered with their Bellevue study. In fact, it will work against the very thing we are trying to accomplish: the mental health of Ontario citizens. The bottom line is that many individuals in our communities will not seek the help they need and want out of fear that they will be forcibly drugged with toxic substances that have horrible effects, some of which will last a lifetime, even after withdrawal.

There's another issue here that is of great concern to me. Women comprise over 75% of those using mental health services. Study after study has shown that they are in the system because of sexual, physical and emotional abuse. This legislation, accessible to and manipulated by unscrupulous others, may have devastating consequences

for already traumatized individuals. Consider how it might be used against a woman or a young person fleeing a physically and sexually abusive parent or spouse, breaking silence and disclosing to others what is happening to them. In addition, many homeless women and children are living on the streets because of family abuse. This legislation, as I understand it, means to include the homeless as one of the target groups. Is drugging abused women and children the answer to their despair? I don't think so.

Consider also what might happen if a family member wants access to the money of their elderly parents and manipulates others in order to acquire it. Because of time constraints, these are only two examples of how this legislation might be used by self-interested others, but are you willing to take the risks associated with them?

I am not arguing for no response to people in distress. Many individuals suffer traumas that make their lives miserable. Supports are required to help them find acceptance and a safe place in society. We have examples of excellent, low-cost responses that not only support people but help them to maintain their dignity, that offer them choices, that accept them as they are. Instead, we bow to the hysterical yammerings of people who have forgotten history. Let me remind you and them of it. It was the mentally ill who were among the first to be targeted for extinction in Nazi Germany, referred to as "useless people." Today we don't murder them, but we might as well, because chemical lobotomies aren't even close to what one might characterize as life.

Despite the lessons of history, we bow to those who would serve up the vulnerable on the altar of multi-national, shrink-wrapped, high-tech, big-money responses in order to force so-called normalcy on a vulnerable population to supposedly let all of us sleep a little safer at night. I, for one, do not feel safer with this proposed legislation. Far from it. My own experience with it tells me that there's far too much hocus-pocus in psychiatry to think that this approach won't lead to grievous abuses of individual liberty and health. Today it is individuals with psychiatric labels who may fall under this vile legislation. Tomorrow it may be you, because all of you sitting there have the capacity, because you too are human, to feel and to feel deeply.

In the years to come, when your lives in politics are over and you're looking back on your careers, I expect this Legislation will give you, your children and grandchildren little pride. In fact, I believe you may live with the shame of it for the rest of your lives, and the shame of it will continue in the lives of your family members. Remember a lesson from our First Nations communities, who first consider the impact of any decision down seven generations. Do you want to be remembered as the Legislature that decimated the civil and human rights of vulnerable Ontario citizens? I hope not.

I'd like to end with a quote from Martin Luther King: "So the question is not whether we will be extremists, but what kind of extremists will we be? Will we be extremists for the preservation of injustice ... or will we be extremists for the cause of justice?"



Scrap this bill. Develop respectful services for people who need them and strengthen the successful ones we already have.

Thank you, and good afternoon.

**The Chair:** Thank you very much for your comments. We appreciate you coming forward here today.

With that, the committee stands adjourned until 1:30. See you all back here then.

*The committee recessed from 1236 to 1339.*

## ONTARIO PSYCHIATRIC ASSOCIATION

**The Chair:** Good afternoon to members and guests. We resume hearings on Bill 68. Our first presentation this afternoon is the Ontario Psychiatric Association. We'll welcome them up to the witness table. As an expert panel, you've been given 30 minutes for your presentation and you may divide that as you see fit between talking to us and taking questions.

**Dr Alan Eppel:** My name is Alan Eppel. I'm the immediate past president of the Ontario Psychiatric Association. With me is Dr Lawrence Martin, who is on the faculty at McMaster University. Both of us work at St Joseph's Hospital in the department of psychiatry here in Hamilton.

I'm going to be quite brief in my remarks because I'm sure you have an overwhelming amount of information that's been presented to you. What I would like to do is to convey some key principles and key issues that I know have come up. You have a copy of our brief, which is brief, and I just want to focus on the summary which is the first after the face page.

The Ontario Psychiatric Association supports the proposed amendments in Brian's Law because they will: reduce suffering of patients and families; reduce hospitalization; reduce the imprisonment and criminalization of many of those with mental illness; respond to recommendations of numerous coroners' juries over the past decade; maintain the human rights and legal protection of patients in accordance with the Canadian Charter of Rights and Freedoms; and finally, will allow the restoration for many patients of real freedom, autonomy and dignity.

Another major point I'll make, as it has come up frequently in discussions of the existing Mental Health Act, has to do with the language of the act. The language of the act must be clear and understandable, and not be made hamstrung or unworkable by complicated and repetitious procedures.

For these reasons Ontario Psychiatric Association supports the changes put forward by the Ontario Medical Association earlier this week in their brief to this committee. I'd like to thank the government for the opportunity to provide some input into this process. In the following pages of the brief, there's some elaboration on the points I have made, and I won't repeat those.

I will say something, though, on the issue of human rights, because that is central to any issues concerning mental health legislation. We believe that our Constitu-

tion offers as a right, life, liberty and security of the person. Under the current act, many people who are so seriously ill that they do not realize they are ill are deprived of that right and don't have the opportunity for health, recovery and the ability to work, make relationships and have some quality of life. So we see no contradiction in the present amendments and the guarantees of the Canadian charter, and the present Ontario laws provide for very extensive and rigorous rights protection.

I will conclude by calling upon all you who have the true interests of patients with severe and incapacitating mental, psychiatric illness at heart to support Brian's Law and our proposed modifications. Thank you very much and I'm open for questions.

Dr Martin has had personal experience in New Zealand in the use of community treatment orders, so he may respond to some questions pertaining to that.

**The Chair:** Thank you and you've left us lots of time for questioning in each caucus. This time we'll be starting with the government.

**Mr Clark:** Thank you for coming. I do appreciate it.

Earlier today we heard from a group that had some concerns about acquired brain injuries. I'm wondering if you might comment. Their position was that they had a concern that acquired brain injuries fell outside of all this and that they wanted to make sure that community treatment orders for those who were seriously mentally ill as a result of an acquired brain injury would fall into this legislation that is proposed. Could you comment?

**Dr Eppel:** Under the current Mental Health Act, the definition of "mental illness" is quite broad and certainly would include people with acquired brain injury. Brain injuries, organic brain syndromes are psychiatric conditions. They are documented in psychiatric classification systems. So I don't see any difficulty, where someone has impairment of thought or perception or memory and meets the other criteria, in their being included under these orders. As I say, that depends on the definition of "mental illness" or "mental disorder" which is in the existing act.

**Mr Clark:** My second question, if I may, Chair. There's been some discussion in our consultations, in this round of the hearings, about a preamble to the legislation. I guess that over the years there have been preambles which identify the spirit, the intent. Is it your position that a preamble would be helpful in this case in terms of what the spirit of the law is supposed to be?

**Dr Eppel:** The Ontario Psychiatric Association does support the idea of a preamble to generally explain the purpose of the act. The present act is more of a police act. It is really characterized by a focus on dangerousness rather than care and treatment for people who are very ill. So we certainly would like to see a preamble, if that were possible, explaining that the purpose of the act primarily is to provide the care and treatment to individuals who are very severely ill, particularly those who may not realize that they're ill and may not be able to consent to or refuse treatment.

**Mr Clark:** Just two last ones and then I'll pass it on to my colleagues here. There had been discussion through-



out the consultations that I chaired across the province that the nomenclature was something that was a concern for people. The idea that it was being called a community treatment order seemed to be somehow inconsistent with the fact that it was consent based. Do you have any concerns about that or comments on: Is this a community treatment order or is it actually a community treatment agreement or a plan?

**Dr Eppel:** I don't have any trouble with the change in nomenclature if the present nomenclature is not acceptable to certain people. I don't think that is the main issue. The main issue is the content of the law and whether it will be workable and practicable. I don't think the name change will be a problem for the OPA in any way.

**Mr Clark:** The last question that I have for you is, there have been discussions and I think it's only come up maybe once or twice so far in this set of hearings, but in the other consultations there were discussions about the right to treatment, that somehow we should include that, that there should be a right to treatment for mental health patients. Would you care to comment on that ideal?

**Dr Eppel:** I guess something like that could go into a preamble. In my remarks I did refer to the Canadian Charter of Rights and Freedoms. Certainly I think there's a valid interpretation that there is some right to life, liberty and security of the person, which means equal access to health services. If you are unable to access them because of the nature of your illness, your right to that should not be taken away from you. So in some sense, that may be an idea that might fit in with the rest of the act, yes.

**Mr Barrett:** In your brief you indicate support for amendments in part because community treatment orders would reduce hospitalization, and that's my understanding of the goal for this. However, if a person is not confined with a community treatment order, they would perhaps be referred back to a psychiatric facility for an assessment, not necessarily hospitalization. That depends on the assessment.

**Dr Eppel:** Right.

**Mr Barrett:** Could you tell us a bit more about the assessment tools that are used or the length of an assessment or what is an assessment? There's no law requiring an assessment, as I understand, but I would assume most institutions now do an objective assessment, rather than just putting someone in a bed without checking them out.

**Dr Eppel:** The key method in psychiatry is the interview of the patient and perhaps their relatives or other key people whom they will consent to allow you to interview. We assess people on the basis of their mental functioning, their thinking, their perceptions, whether they have hallucinations, their mood, whether they're very depressed, whether they have thoughts of suicide or attempted suicide or any homicidal thoughts or intentions, whether their memory is intact. So it's a clinical assessment, although we're not too far away from the point where MRI scans and so forth may play a role in some of the more serious disorders. Essentially in psychiatry it's a clinical assessment, and there are no simple blood tests and so forth.

#### 1350

The issue of rehospitalization is clearly an area that has caused some confusion. The studies show reduction in rehospitalization and length of stays in hospital. The question of the person who does not follow the community treatment order and then is readmitted, those patients are in the system already now and they are relapsing and being admitted many times. They constitute the revolving-door situation. So in fact, with that group, with community treatment orders there will be less of a revolving door and fewer admissions. That seems to be the impact in the North Carolina study and some of the other studies that you may have heard of already. Does that answer your question?

**Mr Barrett:** Yes, that helps a great deal. I understand in the existing Mental Health Act the administrator of the hospital can release a patient. Does that compromise this direction if we are bringing in community treatment orders?

**Dr Eppel:** Are you referring to the leave of absence which has to be authorized by the officer in charge? Is that what you're referring to?

**Mr Barrett:** I'm not sure.

**Dr Eppel:** That sometimes can be cumbersome. CEOs, being removed from the clinical situation, may be concerned about liability and so forth. It would make sense that the CEO delegate that to a clinical person, the attending physician or the chief of psychiatry, so that that would spare them the concerns they may have.

**Mr Patten:** Thank you very much for coming today. I have three questions. You need not do it right now, but would you share what you believe are the best studies available that demonstrate the value of community treatment programs or agreements or whatever they're called? I'm tending to not want to use the term CTOs any more, because it raises such ominous reactions. If you would do that, that would be very helpful, number one. Secondly, some groups come before us and say there is no evidence to suggest any better value or any improved condition of the patient.

Then, Dr Martin, I'd be interested in your experience in New Zealand. What was going on there, what has happened, and how do they deal with this?

**Dr Eppel:** Do you want to respond first?

**Dr Lawrence Martin:** My description is from four years ago, before I came to McMaster. I worked for one year on an acute care in-patient ward and followed patients in an outpatient setting as well. The range of illnesses we saw there were what you would see in Canada. It's the same worldwide.

The hospital had a population, in- and out-registered patients, of approximately 1,000, and of that, I would estimate—and this is not a hard figure—that fewer than 20 were on CTOs. It was in fact not abused. It was used quite sparingly. The physicians were quite aware of the fact that people on the whole do not wish to be on a CTO and used it only in cases where it was clearly necessary, where problems with non-adherence were leading to many readmissions. The process involved a hearing



before a three-person panel and the criteria for being on a CTO were the same as for involuntary commitment.

The CTOs, as I say, were used quite sparingly and were very nicely amalgamated or part of a more assertive outpatient program. If someone was known to have problems with adherence, had recurrent bipolar illness or psychotic disorders, the nurses would go to the home and follow up. So often it wasn't necessary to invoke the CTO; it was simply a matter of making contact with the patient when they were disorganized or beginning to lose grip.

Where the illness had advanced beyond that, patients were brought into hospital. This happened, over the course of one year, in only four cases that I can think of. The patients who were on CTOs—I think that as psychiatrists we tend to be quite mindful of the impact that this can have on a person, to be placed under a mandatory treatment order. I think that's one of the reasons it was used sparingly. But I thought it was an invaluable part of the mental health system and I noticed the difference as soon as I returned to Canada.

What was very different was that, although many of the individuals on CTOs did not initially wish to be on the order, by maintaining health they were able to build on their skills and to be much better integrated into the community. What was very striking was that instead of a pattern of recurrent illness and, if you wish, a career of illness, they were able to attend regular workshops, participate in programs and be employed because there was consistency in their lives. That consistency was something they had not had previously, so it allowed for active rehabilitation.

One last comment: There is a problem having to do with the type of diagnosis patients will have on this order and it was there largely for patients with psychotic disorders. It was not—and on rare instances that I saw, I think there was only one case of a patient who had bipolar illness—used to require treatment that was non-pharmacological, in what I saw. It was not used to require that patients with characterological disorders or personality disorders be required to attend treatment. It was largely restricted to use where treatments were known to be effective.

**Dr Eppel:** About the studies, they are complex because the conditions are not always the same in each state or each jurisdiction. North Carolina is probably the one that's been most well studied. Their latest report was in the *British Journal of Psychiatry* of April 2000. I can get back to you with other information.

**Mr Patten:** Thank you very much.

**Ms Lankin:** I thank both of you so much. This is really invaluable information and direct experience that you're providing to the committee.

I'm very interested in your comments, and the last comments you just made about the majority being patients with a psychotic disorder. It speaks, Dr Eppel, to your comments around perhaps the use of a preamble. We've asked for a number of studies to be provided already. One of them is the Swartz study from the States, which shows that the success of CTOs in reducing

hospitalization is pronounced for the sub-population of patients with psychotic disorders and is not pronounced for the sub-population of patients with mood disorders—I'm not sure of the right terminology to use, but you will know what that means—also, that the success of it is multiplied by the degree of community supports in place to support the CTO.

In a sense I've been trying to circle the square, square the circle, whatever that expression is, between the fears among some people in the psychiatric survivor community and the real plea from families, particularly families of patients with psychotic disorders.

I'm wondering, if the studies indicate this and the experience indicates this, is there a way to clinically narrow the application of CTOs so that people—and I'm going to ask you a few questions in a moment about the actual language here. I think what people fear is inappropriate application of the language or the language being inappropriately structured and that it will capture a broader group of people. Have you given any thought to a clinical narrowing?

1400

**Dr Eppel:** We have, actually, and that's a very good point. Our solution to that was to narrow the current definition of mental illness in the present Mental Health Act so that it would apply only to people with serious incapacity, with impairments of perception and judgment and behaviour and so forth. That would narrow it down and it might reassure some of the people you are referring to that they wouldn't be scooped off the street and medicated and all this fear-mongering that we've heard.

The intent of the act is certainly not to do that. It's aimed at a certain group of people that is small in number but yet who are suffering a great deal. We had thought that one way to go would be to narrow the existing definition of mental illness so that it would exclude certain groups to whom it clearly wasn't relevant or wouldn't apply. That would be one possible way of doing that.

**Ms Lankin:** Perhaps we can contact you later to get some ideas about that.

**Dr Eppel:** Sure.

**Ms Lankin:** Having said that, one of the things that bothered me as a layperson in reading the actual structure of the legislation about how a person gets put on a community treatment order—you mentioned in the experience you had that a person came before the three-person panel. It was the same criteria for an involuntary commitment.

In this legislation, to use the shorthand language, a physician—not necessarily a psychiatrist, and we understand the reason for the language being written that way—if a physician is of the opinion that the patient meets a number of criteria, but one of the key ones is that they meet the form 1 criteria, that patient can be placed straight on to a CTO.

I've talked to some heads of psychiatry of the hospitals who say there are people who are form 1 who come



for an assessment who, when given an assessment, sometimes are not involuntarily committed. Yet an individual here could end up, without ever having that psychiatric assessment, on a CTO. What he backed that up with was that the legislation allows for regulations, granted, that say what kind of physician and/or background.

But in rural communities where there is no access to a psychiatrist, where you have a physician and the relationship with the family member, the criteria as they stand don't necessarily get you to the kind of patient you're saying would be appropriate for a CTO. I think that's where some of the concern rests. Do you have any thoughts that there should be at least at some point a reference that a psychiatric assessment is actually involved in this?

**Dr Eppel:** It makes sense that certainly there should be a clinical examination. As you know, in parts of the province there are no psychiatrists—there are very few—and that has always been an issue in Ontario, so we have to make provision for that. But certainly the patient should have a thorough clinical assessment.

The criteria in Ontario are very strict for involuntary admission and it's not that easy to meet them, and that's again another protection. They are probably at this point some of the strictest in the world because there has been a swing back from the very strict dangerousness criteria. We believe there are all kinds of protections within the act, including the criteria and also the appeal mechanisms.

We make some reference in here to the wording in the current amendment about community treatment orders. It does tend to be rather cumbersome and a bit repetitive. We would like to see that section simplified and made more understandable. But in terms of protecting peoples' rights, nobody has to use a CTO if they don't want to. Nobody is compelled.

**Ms Lankin:** I'm not actually even looking at protecting. I'm looking at ensuring—this is supposed to be less restrictive. I just want to make sure that these are the kinds of patients who would in fact be involuntarily committed and the kinds of patients who in fact are as you describe them and would benefit from the CTO. I do not want to make it more cumbersome. In fact, I think narrow it down and make it a little bit clearer.

**Dr Eppel:** Yes, we feel that with the addition of section 15(1.1), which is the new involuntary criteria, the existing criteria will only embrace people with very severe illness who may benefit from it. If I understand you correctly, I think, based in the criteria, that should protect, or ensure that it's the right people.

**Ms Lankin:** I'm a layperson, but I think a situation where a physician in the community can come to the opinion that a person could be form 1 and sent for an assessment, can put them on a community treatment order, isn't quite enough. When you look at the criteria about previous hospitalizations, those could have been voluntary hospitalizations. They're not necessarily involuntary hospitalizations. I'm just looking for a way to

make sure that your profession and that kind of an assessment are in there someplace as we go through this process. I don't know how to accomplish that.

**Dr Eppel:** I'd have to give some thought to that. Some reference to an appropriate assessment might be indicated.

**Dr Martin:** They would still have access to the appeal mechanism, of course.

**Mr Patten:** Can I just ask for a point of clarification on what you have raised, Frances, that someone can be put on a community treatment order without an assessment: I don't think that's there.

**Ms Lankin:** Yes, it is.

**Mr Clark:** That's not my understanding of it.

**Ms Lankin:** Maybe we can actually clarify that later, but if I could tell you briefly my understanding: The criteria that are there say that the individual has to meet, in the physician's opinion, the form 1, which is to get you to the assessment. You don't have to go and have the assessment. That's what I was saying in reference to what Mr Barrett said earlier.

When you put that together with the criteria about previous hospitalization, the fact that those two hospitalizations in the previous three years could have been voluntary hospitalizations, it allows for a broader net. I'm not saying that would be applied, but I think we could be clearer in what it is that we expect to be applied. That's what I'm looking for.

**Mr Clark:** If I may clarify, and we should clarify further, I understand that we have one section that you're referring to, and then clause 33.1(2)(c) talks about a "72-hour period before entering into a community treatment plan, where the physician has examined the person ...." So there is an actual examination of the patient.

**Ms Lankin:** If I may refer you to subclause 33.1(2)(c)(ii): "the person meets the criteria for the completion of an application for psychiatric assessment under subsection 15(1) ...." It's the application for a psychiatric assessment. It's not the next step, the form 3 psychiatric assessment and determination of eligibility for involuntary committal or not. That's the issue I've been trying to raise.

**Mr Clark:** I understand. It's covered under clause 33.1(4)(b): "A community treatment order shall indicate the facts on which the physician formed the opinion referred to in clause (2)(c)," which is the actual examination. We can ask for some clarification on it, but I think it is covered off.

**Ms Lankin:** But it's not necessarily a psychiatric assessment. It should be.

**The Chair:** I think you have your undertaking from the parliamentary assistant to seek that clarification, Ms Lankin. I'm sure we'll all look forward to getting that at one of our future hearings.

Gentlemen, thank you very much for coming before us today. We appreciate your bringing your expertise to us.

**Mr Clark:** Mr Chair, if I may: ABI, acquired brain injury, was brought up earlier today and whether or not it would fall into this. Can legislative research investigate



whether there's a legal opinion on it for this act and how other jurisdictions dealt with acquired brain injury in their mental health acts.

**The Chair:** Thank you.

#### BRIAN LANE

**The Chair:** Next up is Mr Brian Lane, who is here. If he could come forward, please. Good afternoon, Mr Lane. Welcome to the committee. You have 10 minutes for your presentation. If you wish, you can either use that time to talk or you can leave some time for question and answer.

Let me just suggest to the members around the table that with individuals there sometimes isn't enough time for all caucuses, so I will follow the same rotation, with all the time going to whichever caucus is next in the rotation, if that meets your approval.

**Mr Brian Lane:** I'm going to look at this in terms of human rights issues. To me, this smacks of Nazi dictatorship. That's the view I have of this. I'm from the Dundas-Flamborough-Ancaster area. I've got the local paper. All it's talking about is dictatorship and criminal activities in the local towns. The mayor is talking about Nazi-style tactics and this type of thing. I feel that this government has gone much too far in that vein. This legislation is a sort of pinnacle of what I see as Nazi legislation.

I talked about this a couple of days ago to a doctor who's Jewish. I said, "What do you think about this legislation?" First of all, she didn't believe that anything like this would be introduced in Canada. Then I said to her, "Well, what's your view?" She said, "This is what the Nazis did." I said, "What do you mean?" She said: "The Nazis went after the mental patients first. They rounded them up. They identified them. They put them in hospitals. They took away all their human rights. They started doing all these experiments with them. Then eventually the psychiatrists started killing them."

Hitler was in power for a few years—I've got a quote here. This is from a psychiatrist. Hitler said, "I have nothing to do with this program." Hitler hadn't started it, but he took over the killing centres and their psychiatrists and used them to train his SS to kill Jews. That's where the SS learned to kill, by killing not Jews but German Christian mental patients.

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All we need to do is go back to see how Nazi Germany got underway and ended up killing six million people. It started with the mental patients. You take away people's human rights. They had good intentions, even in Canada and the United States. They were going to create a superior race. They were going to sterilize these various groups of people. That's what they did. As you know, it even went on in Alberta until the 1970s.

It started out with good intentions. The psychiatrists eventually started killing their patients, a massive euthanasia program. Hitler came along, took over the killing centres and had the psychiatrists train the SS to kill Jews.

It's well documented. If you look at who's getting the funding among Holocaust survivors, one of the four groups is mental patients and the disabled. We've been down this road, we ended up with six million people being killed and we don't want to go down this road again.

In terms of violence in society, I have a residence in a very expensive neighbourhood. When I moved in there—I'm single—the neighbours said, "You can't move in here because you're single and this is only for families." They further said to me: "Since you're single, you're probably a homosexual. We don't want our kids harassed by a homosexual." These are the doctors and the nurses and the top bureaucrats. These are very wealthy people with very expensive houses in this neighbourhood. I was threatened with arson, I had a fire behind my house, I've had dog attacks, and last week I had shots fired through my window sort of as an encouragement for me to leave. There's violence at all levels of society. Of course, if you're at the higher level, nothing happens. When I went to the town about the dogs attacking me, they wouldn't do anything about it because you don't take on lawyers, you don't take on doctors and this type of thing.

I just want to point out to you that to try to stigmatize one group because of one incident is completely unfair. I could find an Italian, a black, a white, a woman, a man and I could say, "Let's create a law because of what this one person did." That's unfair, especially when you're dealing with the most vulnerable people.

I strongly support choice. I think that's where you should be looking. You should be supporting and empowering people, choice and normalizing mental illness. It says one in five people has mental illness and seeks—that's what the Clarke Institute reports. Surely some of the members of Parliament therefore must suffer from mental illness. It would be nice if someone stood up in question period and said: "Look, I'm a member of Parliament but I have a mental illness. I just wanted the public to know that it's OK to talk about having mental illness. It's OK to seek psychiatric help and normalize things."

This is going to do the opposite. Who's going to go to their doctor and voice that they have a mental illness? They're going to be terrified. Police are not even allowed to make any judgment. They're supposed to just go in and pick up the person. Say a person is in his neighbourhood or he's in his job and suddenly the police come in and pull him out. Everyone says, "What's going on here?" "Well, this person has a mental illness and we have to take him in for forced treatment." Suddenly, he doesn't have a job any more. His social standing is shot. No one wants to have anything to do with him.

As I say, it's Nazi tactics. If you want to help psychiatric patients, you want to put funding and control in their own hands to forge relationships with the patients and say: "We've got X amount of money that we're willing to put into the mental health system. We want to make sure that we get the biggest bang for the buck. What can we do that's going to help you? If it's seeing



the psychiatrist, if it's taking your psychiatric medication, that's fine." Most people would support that.

But if there's something else, if your immediate need is housing, because we have all these people living on—Mel Lastman says they're living on \$10 a day as homeless people. Mel Lastman claims that's the government policy, to just shove them out on the streets and let them live on \$10 a day as homeless people until they die. Whatever money you're going to put in, let the patients have control over their own lives as much as possible and find out on an individual basis and on a collective basis what their needs are and then address those needs directly.

My brother, who is a psychologist, was telling me that they brought in some guy who was living under a bridge and they did all these tests on him. They spent about \$20,000 or \$30,000 in tests. That's what it cost for all the psychiatrists, nurses and everything else when they had him in the hospital there. At the end they did the diagnosis and that was it. They had it all figured out. Then they sent him back, and he's living under the bridge again. What kind of sense does that make? That \$20,000 or \$30,000 should have been used to actually address that person's specific needs and work with the person instead of working against the person.

I've met all kinds of doctors and psychiatrists because I've been involved in this type of thing for several years. Psychiatrists need to examine: If they can't form relationships with patients, then what are they doing in the profession? Some people are good at forming relationships and some people are good at establishing a doctor-patient therapeutic relationship and some people aren't. One of the things that really concerns me—and Mr Clark will find this interesting because he was involved in working with the companies that were trying to dump pollution in Taro and whatnot. I'm sure when he pointed out to the big companies some of the problems that were being caused by dumping these toxic chemicals into the soil, he found out that the companies didn't say: "Well, thanks, Brad. You're a really good citizen. We want to clean up our act, because all we care about is serving the public good," and that type of thing. They didn't really do that, I don't think, Brad. I think they probably hit you with about a \$20-million lawsuit and did everything they possibly—I talked to one fellow, and they put a microphone outside his house so they could tape his private conversations with his wife and whatnot. This is what I heard, anyway.

You have to understand that the pharmaceutical companies are interested in market share and profit. They want all of us to be on psychiatric drugs, to have our moods lifted and dropped. That's their business. They want market share; they want profits. They want the psychiatrists to use their medications.

I did a study across the province of mental patients, past and present, and I found that about half of them said they were actually surviving the mental health system. In other words, they were like Holocaust survivors or sexual abuse survivors. Half of them were survivors. The gov-

ernment doesn't want to put millions and millions of dollars into, so-called, helping mental patients and having half of them say: "Holy man, I survived. My friends over there committed suicide under the system. They couldn't handle all the side effects of their drugs. They couldn't handle what was going on there." That's not what you want. You want 99% of the patients to come back and say: "Thank God for the mental health system. Thank God for government spending." Whatever you spend in the system, you want the people to benefit from it. You have to work with them.

One of the things you have to do is really work in terms of the community. When the community sees this legislation, they're going to say: "I knew it. I knew they were all dangerous. I knew they had to be picked up by the cops or they were all going to kill us." That's the exact opposite of—you want the normalized things. You want to build relationships. You want to say to the community: "Look, one in five Canadian citizens with full rights has an illness, and it could be your mother or your brother. It could be anyone." It's probably higher than one in five. And they're coming back into the community, because we don't want them all stuck in the hospital. For one thing, we can't afford it. You want your tax breaks and everything else. They're coming back into the community. Sure, we're going to want those patients to work along with everyone else to do what they can, to stabilize their health as best they can. But we're not going to allow the community to harass them, to abuse them and to do all the things that are going on right now towards mental patients. This legislation is just reinforcing that stereotype.

**The Chair:** Excuse me, Mr Lane, we've actually gone over the 10 minutes. Could you make some closing comments?

**Mr Lane:** OK. I've sent some material in, and I'll pass some more to the committee.

I think you want to move away from where you're going and move towards working with the patients and patient groups, supporting patients' funding. Under the NDP—I thank God for Bob Rae—I did get some funding. I was pushing for change and, to a certain extent, I was welcome. Then—again, as Brad Clark will know—the powers that be, the bureaucracy in the government, the pharmaceutical industry and whatnot, said: "Hey, wait a minute. We don't want to lose market share. We don't want to lose control. This guy is talking about choices. That means the patients might find other ways for treatment instead of our drugs." So there was a real backlash against me.

Move forward, people. These patients are you and me and your mother and your sister and your brother. These are full Canadians. Treat them as full Canadians. If they have an illness, let's all work together to treat it as full Canadian citizens and not diminish anyone's rights.

Thanks very much for your time. I'll send some stuff in, and hopefully you can consider it.

**The Chair:** Thank you very much, Mr Lane. We appreciate your coming before us here today.



### HAMILTON PSYCHIATRIC HOSPITAL PATIENT COUNCIL

**The Chair:** Our next group is the Hamilton Psychiatric Hospital Patient Council. Could they join us at the table, please. Good afternoon and welcome to the committee. We have 20 minutes for your presentation.

**Ms Patricia Landry:** I'll be reading, if you don't mind. Our preface is at the beginning of our presentation. You can go over that at your leisure.

Respected committee members and guests, I am a facilitator for the patient council board of directors at Hamilton Psychiatric Hospital. The HPH Patient Council's mandate is to "forward the concerns of in-patients, outpatients and former patients to the hospital administration to help promote better conditions and treatment for all." We work in systemic advocacy on behalf of consumer-survivors in HPH, in the HPH catchment area and in the province. I have brought our brochure with me for any of you who are interested in reading our goals and philosophies.

We are concerned about Bill 68, and I have been asked by my fellow patient council members to share our concerns with you and trust you will take them seriously when you consider any legislative changes to the existing Mental Health Act and Health Care Consent Act.

It is important to note first that our board has not issued a statement for or against the proposed changes, or the implementation of community treatment orders. Some of us feel, in fact, that CTOs may be necessary at times. Others disagree altogether and subscribe to the statement issued by the Psychiatric Patient Advocate Office that, "Society's interest in protecting people from themselves must be balanced against society's interest in preserving the fundamental freedom of its members." We've included that document in your package, if you choose to look at it. The HPH Patient Council does, however, share several important concerns. They are as follows:

(1) In a recent letter to you, we wrote that the community consultation process regarding the bill, headed by the ministry, did not allow any time beforehand for stakeholders and consumers to prepare statements, establish consensus or to even attend the consultations at all. We extend this objection to the timing of the hearings this week. The time for debate on this bill is sliding by too quickly, and we wonder if this is an attempt to prevent public objection.

As we wrote to you recently, we also object to the bias by which the community consultations by Brad Clark were conducted. You will note that the agenda only allowed discussion for the implementation of community treatment orders, and certainly not whether people were for or against them. We would ask you to take more time before you make your recommendations, and that you directly consult with consumer-survivor groups before the debate over Bill 68 goes any further.

(2) We feel that stigma and media sensationalism have played a part in the introduction of this bill. The media, in a way that criminalizes the mentally ill, has exploited recent horrible tragedies. Here in Hamilton, during the recent inquest into the death of Zachary Antidormi by Lucia Piovesan, the horror story was told over and over again by journalists, reinforcing the negative stereotype that people with severe mental illness are dangerous killers and stalkers. This plays on and adds to the escalation of public fears.

The majority of people with mental illness suffer for it and face threats to their freedom to make treatment decisions. We would ask you to seriously research the effectiveness of CTOs in the manner that was done by CMHA Ontario in their published literature review before you consider any legislative changes. We would also ask the Ministry of Health for money to be invested directly into extensive public education to combat negative stereotypes, especially if this bill is introduced.

(3) We feel that the name given to the act, Brian's Law, plays on public fear and sentimentality. Again, given the stigma that mentally ill people face, the name of this bill brings to the fore an assumption that it must be introduced for fear that people who would otherwise be put on community treatment orders would commit a horrendous act like that experienced by Brian Smith. How unfair and how untrue. Again, with the title of the bill, all mental health consumers are criminalized and connected with a murder. Perhaps public support for the bill might have been far less because of the questions the proposed legislation poses about encroachment on the rights of consumers if it had not been attached to a murder, an isolated incident that screams, "Get these people off the streets," to the general public. We would ask you to retract the name Brian's Law from any new legislation regarding the Mental Health Act and the Health Care Consent Act.

(4) We support what Lyn McLeod has recently said, that, "It's hard to believe that the government could have completed two consultations on mental health, leading to a significant piece of legislation that they want to introduce this spring, and yet not put anything in the budget to back up that legislation." She went on to say that, "Every person who has knowledge of the needs of mental health, whether a supporter of community treatment orders or not, agrees that there must be more money for community treatment."

We say that Ontario does not yet have the comprehensive range of services and supports, and choices thereof, necessary to keep consumers healthy and from slipping back into illness. Services and supports that provide employment options or economic stability are barely available, and the ODSP allowance is too low. Housing options are scarce for people on such a limited income, and the lack of basic necessities can lead to low self-esteem, social isolation and, in the long run, illness. If society took care of its people with mental illness—for example, as it would someone with cancer—Bill 68 might not even be necessary. We would ask you to



recommend to your peers that more money be put into the mental health care system.

(5) Specifically, we would ask you to recommend that more money be considered especially for meaningful activity, employment, dignified housing, innovative mental health programs that subscribe to psychosocial rehabilitation philosophy and opportunities for consumer-survivor empowerment. All of these lead to overall wellness. More investment is needed for consumer-survivor initiatives, lodging and care home reform, the development of safe houses and respite beds as an alternative to hospitalization, the expansion and development of 24-hour mobile crisis teams, opportunities for consumers to obtain counselling or psychotherapy, which are not covered by OHIP, and case management that focuses on the best quality of life with the least intervention for its clients. Investment in these services will decrease pressure on in-patient beds and lighten the load on emergency rooms. Further, we understand that if people defy their CTO, they will be committed to hospital. We are sure many people will not comply with CTOs, and there will be even more of a strain on hospital beds.

(6) We are worried that community treatment might encompass an obligation to take medications that cause serious side effects and that it will impede the ability of consumers to negotiate treatment. Consumers generally know what their bodies can tolerate in psychoactive medication and what they cannot. Some psychiatrists do not allow for much expression of insight into one's illness, and CTOs might simply be an opportunity to exercise their subjectivity in the treatment of mental illness. In this respect, Bill 68 may further estrange consumers from their caregivers.

Recent research, for example, at the Centre for Addiction and Mental Health—you have a copy of an Internet publication on the study—has indicated that people with schizophrenia can function well on far less medication than they are usually prescribed. We would ask you to provide a venue for service negotiation and collaboration between providers and consumers in the event of a commitment to a hospital or the community in any legislation, along with the patients' bill of rights. In extension to this, it is the responsibility of doctors to relay any and all risks or side effects to a person expected to take a given medication.

(7) We are concerned that the appeal process will not happen quickly enough. We see what long waits for review board hearings do to patients in the forensic system, and we are concerned that those committed to community treatment will experience the same delays in appeal and review. Provisions must be made whereby review or appeal happens within an acceptable period of time—in weeks, not months. This leads me to our last point.

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(8) The introduction of any new law comes with the obligation to protect the rights of those who are subject to it. The adequate provision of advocacy and rights advice must be readily available. This means expanding the

Psychiatric Patient Advocate Office in Ontario, increasing consumer self-advocacy in the mental health system and including provisions in the act whereby, if rights advice and advocacy are not provided upon committal, the person issuing the order faces penalties.

We trust you will consider these recommendations and that you will heed what consumer-survivors have to say during your review of Bill 68. As I said, we have supporting documents for you in your package. Thank you for allowing us to present today.

**The Chair:** Thank you very much. That leaves us with about two and a half minutes per caucus. In the rotation we'll start this time with the Liberals.

**Mr Patten:** Thank you very much for your presentation. I'm assuming you had a chance to review the bill.

**Ms Landry:** Yes.

**Mr Patten:** My impression is that you think the idea of a community treatment order is pretty widely applicable. In your opinion, who might be subject to a CTO?

**Ms Landry:** In our perception, most likely people with severe mental illness, people experiencing a psychosis who have made threats to themselves or others.

**Mr Patten:** I don't know if you heard Dr Martin, who was here before with the Ontario Psychiatric Association and his experience. I think the point that's important is that we're talking about a very small population, even within the mental illness category, a very small subgroup. For example, when we look at figures for Saskatchewan or BC, Dr Martin mentioned that of 1,000 and some patients, they had about 20. We're talking about less than 1% of even that population. That's why I'm wondering if you're feeling this is something that could get away from the system of really addressing a very small number of people who are not aware of their own condition and are a threat to themselves or someone else.

**Ms Landry:** As we said, our board has not issued a statement for or against community treatment orders. In fact, some people think they are necessary, whereas some of us agree with what the Psychiatric Patient Advocate Office has said about balancing the rights of the individual with the rights of society. What our focus is, and what we would like you to focus on, is the funding that's necessary in the community. If you read our preface, you'll note that. We have to get our attention off criminalizing the mentally ill. By putting money back into the community, this bill might not even have been necessary. If we take care of our people who have mental illness and provide them with dignified services and what they need to live, perhaps this may not have been necessary, and perhaps—I'm venturing to say this with caution—a tragedy like that which happened to Brian Smith might not have happened. That's our focus, and that's what we'd like you to consider.

**Mr John Schalkwyk:** There's also COAST now, which is the community—

**Ms Landry:** The community outreach and support team. I don't know if you've heard of that here in Hamilton yet.



**Mr Schalkwyk:** They have come into being since the inquest. Also, we feel that rather than community treatment orders, resources should be put into community supports.

**Ms Landry:** Can I add—

**The Chair:** Could we go on to Ms Lankin, and if we have an opportunity—thank you.

**Ms Lankin:** Perhaps I'll leave enough time for you to continue that thought as well. Towards the end of your presentation you were talking about the balancing act of human rights and rights advice. There actually is a fair bit written into various parts of this legislation. But I was struck that you were asking us to consider penalties for those who issue committal orders who don't provide access to rights advice, which suggests to me you find that that happens. Could you elaborate on that?

**Ms Landry:** Yes.

**Ms Lankin:** That's shocking.

**Ms Landry:** I'd be speaking from personal experience, which I'd rather not do, and I'd rather not speak on personal experience on behalf of our board, which has asked us to make this presentation. But things like this do happen. Forms are not filled out. Form 14s are not filled out. Rest assured that this happens. If you speak with consumer-survivors, you'll probably hear that people know very little about their rights, and you'd probably ask yourself why. With something like this, it is so important that consumer-survivors who are subject to community treatment orders are educated.

**Ms Lankin:** One of the things that has been raised as a possibility in the community treatment order section, where it gets into rights advice and access to rights advice, is that there actually be a prescribed form set out that the individual must sign to indicate that they have received their rights advice. While it doesn't solve the problem if they don't, it does become part of the evidentiary record on appeal. Would that be something that you would think, in addition to your recommendations about penalties, might be useful?

**Ms Landry:** Yes, of course. Providers in the psychiatric system, especially those who work in hospital, are rushed, and these things just don't happen. It's all well and good on paper and to talk about it, but I believe it has to be spelled out clearly that if this isn't provided there's something to pay for that.

**The Chair:** Thank you, Ms Lankin.

**Mr Clark:** Just three quick statements. With reference to the consultations you spoke about where it was facilitated around the discussion of implementation and there wasn't an opportunity to say yes or no, that's incorrect. Everyone in all of the groups had an opportunity to say yes or no and they were all recorded. We have the facts and the records on it.

**Ms Landry:** It was not on the agenda. That opportunity was not on any agenda. In fact, when we broke off into the focus groups, some people chose to make their point. I disagree, for example, with community treatment orders. It wasn't an opportunity that was given—

**Mr Clark:** With respect, I chaired them and I raised it every single time and gave everyone an opportunity to say yes or no up front.

With respect to your question about funding and the comment you refer to about Lyn McLeod, the budget actually does refer to \$110 million for psychiatric services, so you might want to check that out. It is in there.

**Ms Landry:** We've read the background.

**Mr Clark:** Secondly, you've also spoken about COAST, which I'm very pleased is working well in Hamilton-Wentworth. That was also funded by the Ministry of Health. We've reinvested about \$150 million since 1995. I'm not saying that's enough. We all agree at this table and in the community that in order to actually reform mental health, the act, the system, to have that continuum of service, there has to be both ends. We have to have a good system and a continuum, which means we need support in the community. We do agree there, but I'm just making that point.

The last point I want to clarify for you. You stated, "Further, we understand that if people defy their CTO, they will be committed to hospital." That's incorrect. It's a consent-based model. They can actually request to withdraw from the CTO. If you read the legislation, it gives significant rights advice, legal advice to the patients themselves. It also states very clearly that if they're in non-compliance, the physician and psychiatrist can go for reassessment on the patient. It doesn't talk about hospitalization.

**Ms Landry:** We're concerned that that won't happen quickly enough.

**Mr Clark:** That's a valid point in terms of appeals and reviews, and that's a concern I think we all share. But I wanted to make the point that simply because they're not in compliance does not mean they're going to be locked up in a hospital. They go back in for reassessment, and that's the way the legislation is written.

**The Chair:** Thank you very much for taking the time to make a presentation before us here today.

**Ms Landry:** Do I have time to make one last point?

**The Chair:** Very, very briefly.

**Ms Landry:** You talk about funding, Mr Clark. We're talking about funding for dignified services. We're not talking about funding to expand workshops and lodging homes. We're talking about dignified housing and dignified employment options—things that keep people well. We know from first-hand experience that this is true. This will reduce your costs in mental health.

**The Chair:** Thank you. We appreciate your coming.

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LINDA CAREY

**The Chair:** This takes us to our next individual, Ms Linda Carey. If Ms Carey is here, could she come forward, please. Good afternoon.

**Ms Linda Carey:** Good afternoon.

**The Chair:** Welcome to the committee. You have 10 minutes for your presentation.



**Ms Carey:** I do not have a written presentation, but I will be submitting one at a later date which will encompass the comments I'm making today.

I would like to start by thanking you for the opportunity to come and make comments on the proposed changes to the Mental Health Act and the Health Care Consent Act. I am very concerned about the rights of each and every individual in Ontario and particularly the rights of individuals suffering from serious mental illness. It is important that we protect these individuals' rights. We ourselves value our rights, we value our liberty, and one of the issues that I personally value is allowing myself to make decisions regarding my own treatment. If we are going to take away a right from a person, it must be done in an appropriate manner and it must be done with appropriate safeguards so that the person whose liberty or right is being taken away is protected.

In the proposed legislation there are numerous changes to issues which already exist, for example, applications for psychiatric assessment, powers of the police department, powers of justices of the peace.

I'm very concerned regarding the removal of the word "imminent" from criteria for having people brought to hospital as well as criteria for involuntary status. The word "imminent," for myself, is a protection. It says that I not only have to be in danger of serious physical impairment, but it must be a serious physical impairment that is going to happen relatively quickly. It can't be something that's going to happen in a year, two years, eight years down the road; it has to be something that my doctor can really foresee and look at as coming along very, very quickly. That's a great concern.

The use of the words "substantial mental or physical deterioration"—again, I have great concern. Whose opinion is that? The doctor's probably. May he consider my decision or my feelings about it? Yes, possibly, but in all likelihood, no. Again, there's no definition of that. There doesn't appear to be any assistance in the legislation to help the doctor figure out exactly what that means. That is something that obviously the courts would have to deal with.

The other one that I find very problematic is "apparently incapable." In one of the new criteria, the person must be apparently incapable of consenting to treatment. We're asking someone to make this decision, for example, a justice of the peace who doesn't even know the person, who has never met them, has never talked to them. We're asking them to make this decision based on information they get from a third party. That is very problematic. You're asking someone who has never met or talked to this individual to take away something that is very, very important to us, our right to liberty and not to be taken off to the hospital by the police department.

I am opposed to community treatment orders for a number of reasons. It's forcing an individual to do something in the community that they may not want to do. We have to look at assisting people with things such as appropriate housing, getting sufficient money to live,

having something to do during the day besides sitting around on the sidewalk, having work, having social outlets where they can meet people and be friends and not living, as people in Hamilton in second-level lodging homes do, on \$112 per month.

When a person is placed on a community treatment order, it says that the person or the substitute decision-maker may consent. Will that consent, if it's the person, be informed and voluntary? What if they have the impression that if they don't sign that piece of paper they're not ever going to get out of the hospital? I can tell you that many clients, many people are going to have that impression. That is not a voluntary and informed consent.

The issue of rights advice needs to be spelled out much more strongly in the legislation. The doctor is to be satisfied that the individual has seen a rights adviser, but there's no obligation for the doctor to notify the rights adviser that he is going to issue this community treatment order. There's no obligation for the rights adviser to be able to see the person at any time if they want to do it. We have to spell out the role of the rights adviser much more specifically to ensure that the individual's rights are being protected.

A person, or a substitute decision-maker, can withdraw their consent to the community treatment order. The legislation is very specific; it says that. But if you do, you get a whole new bunch of things that you have to do. You have to show up and be examined by the doctor so he can decide or whether you should go into hospital, or you should be on another community treatment order, or whether the community treatment order can be terminated. It's not just, "I don't want to do it any more," and that's the end of it. It's "I don't want to do it any more," and "Now we're going to force you to do something else which may again put your liberty at risk by being brought in to the hospital."

The legislation, the way I read it, allows one hearing in each six-month period on the community treatment order. Many things can happen to an individual in six months. The ability to have a hearing should be more frequent, to allow the person an opportunity to demonstrate that their circumstances have changed, that now they do not need a community treatment order, that things have changed and they are able to live in the community quite successfully. The legislation needs to include either a more frequent time period or perhaps the ability for an individual to ask for an earlier hearing based upon a change of circumstances such as is contained in the Health Care Consent Act regarding treatment issues.

The issues regarding treatment also concern me, because there is a change which allows a health practitioner to apply to the Consent and Capacity Board to depart from a person's wishes. I find that very problematic, because the substitute decision-maker may be saying, "No, you cannot give that treatment," for a very specific reason. I find the health practitioner having that much power over a person's treatment decisions very troubling. A person may make a wish for a very specific reason and



feel that their substitute decision-maker is going to carry that through. Now you're saying that even if the substitute decision-maker is following through, they may be overridden by the Consent and Capacity Board. That's very troubling.

I would ask if there are any questions that anyone may have regarding my statement.

**The Chair:** Thank you very much. We do indeed have about three and a half minutes left. Ms Lankin, the rotation puts you first. I'll leave it up to you whether you want to take all that time or share it with your colleagues.

**Ms Lankin:** Oh, I see. That's the total amount of time?

**The Chair:** Yes, just over three minutes.

**Ms Lankin:** Very quickly then, I'll see if I can touch on two things and leave some other time. The provision that you just talked about in the Health Care Consent Act, I had some concerns about that too. My particular concern was where it was a care facility that can also seek to overturn prior wishes. My reading of it is, though, that they can seek to get permission from the substitute decision-maker to overturn prior wishes, so the substitute decision-maker is still involved. But in the case of some care facilities, particularly unregulated rest and retirement homes, and where the substitute decision-maker is distant and far away, I worry about coercion in that situation. "Otherwise we're going to kick this person out and they're going to be back on your doorstep, family member, for you to take care of."

With respect to the physician, do you still have that same concern, knowing that it's to seek permission for the substitute decision-maker to override previous capable wishes?

**Ms Carey:** I think, particularly where you're talking about care homes and things like that where people may not be as involved with their relative as one would hope, that in fact they may just leave it to the doctor to do it all. That's very problematic, because the substitute decision-maker, under the legislation, has very specific obligations. I don't think people should be allowed to just say, "I'm just going to pass my obligation on to the doctor and let him do it." If the substitute decision-maker does not want to fulfill their obligations under the legislation, I think they should say, "I don't want to be the substitute decision-maker," and maybe someone else would be happy to fulfill that role as is required by the legislation. That's one of my concerns, that they're just going to pass it off and someone else is going to do all the work.

**Ms Lankin:** I'm going to make one quick comment and then pass it over. Your comment about "apparently incapable," I actually raised a concern about that when I went through the briefing, not so much for the JP but for the physician doing the referral for assessment. It seems to me physicians have to make a decision all the time whether the person is capable of giving consent or not capable of giving consent. I don't think it's appropriate to apply a lesser standard in these circumstances of "apparently incapable." So it's one of the things that I'll be looking for an amendment for.

**The Chair:** I'm afraid that has used up the time.

**Ms Lankin:** I'm sorry.

**The Chair:** No, that's fine, Ms Lankin. You were next in the rotation.

Thank you very much again for coming before us this afternoon. We appreciate your perspective.

1450

## MARILYN SMITH

**The Chair:** That takes us to our last presenter of the afternoon here in Hamilton, Ms Marilyn Smith. Good afternoon. Welcome to the committee.

**Ms Marilyn Smith:** To start, I've already offered my apologies to your clerk for the quality of the print of my draft. I had a non-compliant computer printer.

I am here as a private citizen. If you want any information on my background, if time permits at the end, I'll be happy to share with you.

Tragedy has led us here. Innocent persons have faced peril because of mental illness. People have died by their own hand or as a result of actions of persons with mental disorders. Systems—legal, medical and social—have failed us all on too numerous occasions.

The Mental Health Act is often the element chastized for the loss of life associated with mental illness. The most frequently cited concerns with respect to the law have been centred on the inclusion of the word "imminent." Critics of current law have charged that the law renders care providers incapacitant to help seriously mentally ill persons at risk of harming themselves or other persons. It is highly distressing that semantic interpretations of this word by some of the most learned in our society has segued to the point where we now deliberate on drastic physical impositions on the most seriously mentally ill in our community. If one word can be the source of such confusion and destruction, I fear the outcome if certain proposed amendments to the Mental Health Act should be adopted.

Most contentious of the proposed changes is the adoption of community treatment orders. The parameters that define who may be subject to a CTO, despite references to hospitalization and length of stay, are extremely broad. There does appear to be potential for abuse in this component of proposed amendments. An individual who wants treatment, care or support should not have to stand at the back of the line for treatment because another or others have legally mandated provisions for care. Neither should an individual have to face possible unlimited loss of independent life direction by agreeing to a CTO as a condition or requirement for treatment.

Ostensibly these changes have been introduced in response to perceived failures in our current system to ensure that extremely ill and dangerous persons who are unwilling and/or unable to seek treatment are assisted. However, correcting such perceived inadequacies should not create a situation whereby those wanting and needing help are unable to receive it.



While the notion of forced treatment in and of itself is objectionable, the unspecified scope of potential inclusions in a CTO are even more so. For example, it would seem within the realm of possibility that CTOs may spell out similar terms and conditions as those to which convicted criminals must abide as part of parole and/or community sentencing, such as place of residence stipulations and curfew or social relationship restrictions. Mental illness continues to be a source of stigma. We must not perpetuate this with any undertone or perceived conveyance of a criminalization of the mentally ill.

Other areas of concern related to community treatment orders include subsections 33.1(5) and 33.5(4), which would seem to reflect that there does not have to be a designated and/or acting substitute decision-maker to act on the patient's behalf. Just for your quick reference, the first is contained on page 7 of 20 and the second reference is contained on page 10 of 20. That is the source of my concern.

While this would not present a problem if the community treatment order subject's legal and previously expressed wishes were assured, this does not appear a certainty. Proposed changes do permit for applications to be made to the Consent and Capacity Board for a departure from wishes. It would seem reasonable that there be an individual given authority and moral obligation for such an onerous undertaking.

Certain proposed changes to the act earn merit, for example section 5, referencing section 17 of the Mental Health Act, which broadens the authority of the police to detain and escort an individual for the purpose of assessment based on reasonable and probable grounds and that it would be dangerous to proceed under section 16, an order by a justice of the peace. Too often police officers must face the distressed and deceased. It seems reasonable to permit them greater authority to assist in the avoidance of bodily harm to any member of the community.

By way of general comments, I wish to reflect that the first sentence of the explanatory notes of the bill begins by stating, "The bill proposes amendments to the Mental Health Act that would allow persons ... to live outside of a psychiatric facility ... ." Few people actually live in a psychiatric facility, as you or I would define the word "live." They are patients in hospital to receive treatment, similar to any other person with a health problem which may require in-patient treatment and care. When a patient is discharged, he usually goes home, not to a "community residential setting," as is defined in literature provided during the initial stage of community consultations regarding legislative changes to the Mental Health Act, and I make specific reference to a document released by the Ministry of Health on March 22, *The Next Step: Strengthening Ontario's Mental Health System*.

There are members of the legal and medical communities and the community at large who believe that current legal provisions for the forced detention and treatment of the mentally ill are quite broad. Review boards meet frequently, and often at great length, to deliberate on

issues pertaining to patients' status. Despite and because of this, many patients who do not wish to receive treatment or a particular type of treatment continue to receive care. There remain, though, those who wish and require help but remain on a list or in a waiting room until their name is called or they choose to leave.

In closing, I have some suggestions, four specifically, for the creation of a stronger system of mental health.

**Recommendation 1:** While I recognize there is documentation of efforts to undertake public education on the law, in my view those undertakings most recently have apparently failed, so I would again encourage that the government undertake an exhaustive education program on the Mental Health Act, the Health Care Consent Act and the Substitute Decisions Act.

**Recommendation 2:** Prioritize delivery of this program to members and students of both the medical and legal communities. Sadly, it does seem there are medical practitioners who are unaware of their legal obligations, and sadly, it does appear there are lawyers and justices of the peace who are unaware of their legal obligations under current law.

**Recommendation 3:** Recruit, retain, educate and regulate highly skilled, innovative and emotionally sensitive mental health practitioners for our community.

**Recommendation 4:** Ensure our mental health system is optimally resourced, based on the prioritization of the delivery of patient care, not the policing of patient care.

Thank you for your time.

**The Chair:** Thank you very much for your comments. That leaves us with just about a minute and a half. Next up in the rotation would be the government.

**Mrs Munro:** Thank you very much for being here today to give us your views, and perhaps more importantly, your suggestions, because obviously the purpose of this committee is to look at the responses by the public to the proposals that are set before us.

You mentioned at the very beginning your concern about the community treatment orders. Earlier this afternoon it was brought to our attention that in other jurisdictions where similar legislation already exists there have been safeguards put there which ensure that a very small percentage of people would actually fall into that category and need that kind of regulation.

We've had a lot of discussion about the need for some kind of preamble that would demonstrate the idea or the spirit behind the legislation, because very often legislation has by its nature to be in very strict legal language and doesn't provide an opportunity to set forth objectives or the intention. I'm just wondering whether, given the kinds of discussions we've heard in relation to the care with which community treatment orders have been used in other jurisdictions, it would serve your purpose and your concerns if there were such a preamble as I've discussed.

**Ms Smith:** Based on my understanding of some population of people whom this legislation is more than likely targeted towards, based on what I assume that group of people to be composed of, I don't think that

would even console, if you will, any of my concerns. I think that for effective treatment to happen, there has to be the establishment of a therapeutic alliance that involves trust, faith in a care practitioner. You can't trust somebody who is not willing to listen to your concerns and act on those concerns and try and make the best of it, "This is what I think, based on my medical expertise, and this is what you think." On that point, I don't think it would be of any help.

Second, I think we have current systems which would allow people who have concerns about the most difficult to treat, the hard to serve, the non-compliant—at some point in time over the past few years there must have been a period of lucidity that that person achieved. If they have a family member who is so concerned about their well-being, if they can find a time when that person is lucid and try to explain and understand the way of current provisions in appointing a substitute decision-maker, saying: "When you get sick, what do you want? This is how you are when you're sick. You're not like that now, but if you are like that again"—get their legally expressed advance wishes, and then if somebody chooses to allow themselves to become psychotic and very ill—and I know this will challenge most people's stream of thought, but if somebody could make that type of decision, for whatever personal reason, in a state of lucidity, the right to regress is something I believe must be respected, if it's a legally expressed wish and the person is competent and lucid when they make it. If there are questions you have about how that is possible or if you wish to say, "I don't think that is ever possible," I'd really like to hear the yea or nay to that.

**The Chair:** Maybe you and Ms Munro can continue that discussion. Thank you very much again for taking the time to appear before us. We appreciate your presentation.

**Mr Clark:** Mr Chair, before we close, I think what's going to happen as this thing unfolds is there are going to be some proposed amendments that will come out of it from all sides. Some incredibly good suggestions and valid suggestions have been made already. I would like to suggest to all the members that they feel free, and I encourage them, to deal with ministry counsel. I have asked ministry counsel to work freely with the members to deal with their amendments and make suggestions in terms of what the intent may be, where it might fit in the legislation, perhaps in wording or a clause, whatever. Feel free to take that up and deal with the legal counsel and they'll help you craft the amendments you'd like to propose for the committee.

**Ms Lankin:** Just very briefly, may I say thank you, Mr Clark. It was my experience on the other side of the table that that helped in working with opposition critics, in making sure it fit in the right section of the bill. Working with leg counsel is helpful, but that is invaluable. I had hoped that would be the case and I am very gratified to see it is. Thank you.

**The Chair:** With that, just before I adjourn, if the members of the subcommittee could stick around for a second, we'll discuss some issues related to Monday's scheduling. Aside from that, the committee stands adjourned.

*The committee adjourned at 1504.*



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## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 15 May 2000

# Journal des débats (Hansard)

Lundi 15 mai 2000

## Standing committee on general government

Brian's Law (Mental Health  
Legislative Reform), 2000

## Comité permanent des affaires gouvernementales

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 15 May 2000

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 15 mai 2000

*The committee met at 1533 in committee room 1.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

## OFFICE OF THE CHIEF CORONER

**The Chair (Mr Steve Gilchrist):** Good afternoon, members and guests. We are here today for further presentations on Bill 68. The clerk advises me that our first presenters, the Office of the Chief Coroner, are in attendance, if Mr Young and any of his associates could come forward. Welcome to the committee. As an expert presenter, you've been allocated 30 minutes' time, to be divided as you see fit between either presentation or question-and-answer period. We invite you to give your names for the purpose of Hansard, if you would be so kind.

**Dr James Young:** I am Dr James Young, the chief coroner of Ontario.

**Dr Jim Cairns:** Dr Jim Cairns, the deputy chief coroner for Ontario.

**Dr David Eden:** Dr David Eden, the regional coroner for Niagara.

**Dr Young:** Thank you to the committee for inviting us to give a submission. We're very pleased to be able to inform the committee about the inquest processes and some of the recommendations that have arisen from inquests.

We intend to give a brief presentation and then leave considerable time for questions. Following some general remarks, I've asked Dr Eden and Dr Cairns to very briefly outline some details of a few of the inquests, including Brian Smith's inquest and the inquest into Zachary Antidormi, and the inquest into Jennifer England in particular, but we're certainly happy to answer questions on any of the inquests.

The Office of the Chief Coroner is very pleased to see the proposed changes to the Mental Health Act on the table for discussion. We must say that these changes accurately reflect many of the major recommendations of a considerable number of coroner's inquests over the past 10 years.

It is our view, in dealing with the difficult issue of mental health, that mental health is not just a health issue; it affects people, and certainly in terms of our investigation, involves the community, obviously involves the health care system, and unfortunately all too often involves justice issues as well.

The deaths that involve mentally ill people occur, as I've said, in a number of different settings. Unfortunately we have investigated deaths of people who have committed suicide within mental health facilities, who have been involved in homicides within mental health facilities, and persons with mental illness who have died as a result of restraint within mental health facilities.

On the streets and in the community, we deal with issues such as homelessness and the incidence of mental health within the homeless population.

We also, unfortunately, deal with the death of people who come in conflict with the law and in the course of that conflict lose their lives. Among those we would include Lester Donaldson and Edmond Yu, both of whose deaths were inquested.

We also, unfortunately, deal with situations where mentally ill people murder. The Antidormi inquest and the Jennifer England inquest are two examples of situations where people who were mentally ill and in the community committed murders.

Within the justice system, unfortunately, we also deal with deaths that deal with the mentally ill, as well as the whole issue of conflict in the street and police and the courts. Within jail, we've dealt with situations where mentally ill people both commit murders and are murdered, and we deal with suicide situations in the jail involving the mentally ill.

Obviously any jurisdiction that goes about looking at a Mental Health Act is in a contentious area, and we recognize this. We've attempted in as many inquests as possible to provide balanced evidence that goes into the people arguing both for and against the various possible solutions.

What seems to be agreed upon by families, community activists and people giving evidence at inquests, and

in our experience, is that as it's currently constituted, the system is not working well. The solutions that people propose will vary, and this committee I'm sure will be exposed to all, but it's clear to us that what's currently being done and the way it's being done are not working well.

Those who are, unfortunately, trapped in the mental health system, in our view, will likely require help over a long time. Therefore, the province needs to put resources into health, into the community and, unfortunately, into the justice system because of policing, courts and jails.

The Ministry of the Solicitor General did some study of the jail situation some years ago. At any given time in a provincial institution, 15% to 20% of provincial inmates have a psychiatric illness, 5% to 7% of the provincial inmates have a serious mental illness and 9% of the offenders under community sentence have symptoms of mental illness. That's a very high percentage of people who are being criminalized and in fact, in our view, are often in the wrong part of the treatment mode.

Given that there is always a limited envelope of money and resources available, the question is, where is it best spent? Is it best in health, is it best in the community or is it best in justice? Despite coming from one of the ministries of justice, our view is that it's best spent in health and in the community, and not best spent in justice.

In inquests and when we deal with families, they repeatedly say that the current model, which favours rights to some extent over treatment, places too many and too much emphasis on the justice system. Families as well repeatedly talk of their frustration over years of trying to get help for their loved ones, and watching them deteriorate and either die or commit a crime.

1540

If we all agree that the system needs fixing, a logical starting point, to me, is to define the act. Whatever act the government decides to choose and finally settle on, they can then decide how to resource that model. Clearly the current model requires a considerable amount of funding to go into the justice system. A model that is based more highly on community treatment orders may require additional resources and emphasis on the community treatment model and on the community itself. But it is a reasonable and a proper starting point, in our view, to define the act so that we know how to administer and where to go with the act.

I want to very briefly talk about four of the major changes within it. The first is the removal of the word "imminent" from the act. This issue arose at a number of inquests, including Brian Smith, Lester Donaldson, the Jennifer England inquest, the Antidormi inquest and the Stephenson inquest.

The Ministry of Health had an ambitious program in the last couple of years where Michael Bay went around the province and lectured to doctors, police and others about what "imminent" meant from a legal point of view. I applaud that initiative and I think it did some good, but unfortunately we don't believe it is enough in this particular case. MDs are not lawyers. Words like "imminent"

scare them. They don't understand how they apply. They don't understand what situation they apply in. Repeatedly in inquests, as we've illustrated, this issue of what "imminent" means has come up, is misunderstood and results in a failure to treat.

Community treatment orders came up at the Brian Smith inquest, at the Antidormi inquest, the England inquest and the Yu inquest. Clearly the idea is not that everyone needs treatment, but rather that there are situations where people do require treatment in order to remain in the community. Again this has been discussed at length and has been strongly supported in multiple inquests.

The idea of treating on an involuntary admission was a subject at the Brian Smith and England inquests. The expansion of section 17 to allow the police reasonable grounds on which to bring someone in for assessment came up at the Antidormi inquest, as well as Brian Smith and Jennifer England.

Dr Eden is going to talk further about the special circumstances where this came up in the Antidormi inquest, so I'll ask him at this point in time to comment on both the Smith and Antidormi inquests.

**Dr Eden:** I'll provide you with more detail on these two deaths. As Dr Young said, I'd like to reinforce that most violence by mentally disordered persons is against themselves. While these two cases are homicides, suicide is a much more common phenomenon in this group.

Brian Smith, as we know, was a 57-year-old broadcaster from Ottawa who was struck by gunfire as he left his workplace on August 1, 1995. The following day a 38-year-old student turned himself in to police and gave a story of what had happened and provided a weapon, which turned out to be the weapon that had fired the bullet which killed Mr Smith.

This 38-year-old man had been dealing with chronic mental illness for more than 10 years and had severe delusions relating to thought broadcasting; that is, he felt other people could read his thoughts. He also felt that had to do with the powers that be. He had attempted to visit two prime ministers of Canada, as well as another federal minister, as well as a number of other people in authority, to have the thought broadcasting stopped. He had been treated several times in hospital, both on medical grounds and on judges' orders. He had a history of excellent response to treatment, but after discharge he would stop taking his medication and his delusions would develop again. Unfortunately, in this case, it developed to the point where he felt the only way to stop thought broadcasting was for him to assassinate a popular local personality.

In the Brian Smith inquest, the jury representing the community made 72 recommendations, of which 36 were to the Ministry of Health. As Dr Young pointed out, they had to do with monitoring and mandatory treatment in some circumstances of mentally ill people after discharge from a psychiatric hospital.

Zachary Antidormi was a two-and-a-half-year-old boy from Hamilton who was stabbed to death by his 58-year-



old neighbour on March 27, 1997. This neighbour had a 20-year history of chronic mental illness that had finally been diagnosed as paranoid schizophrenia, which is schizophrenia with paranoid delusions. She had been overtly threatening or violent for more than 10 years. Of particular concern to the jury was the fact that during the last two years before she killed the little boy, she had no contact of any sort with a mental health professional, despite numerous attempts by the family to obtain help for her and numerous visits by the police to the residence.

The difficulties the family faced in getting care for her were explored in some detail at the inquest. We looked at sections 15, 16 and 17. I say "we" because I was the presiding coroner at this inquest. Section 15 is the section that authorizes physicians to involuntarily admit a patient. In this case, this lady would not see a physician, so section 15 could not be used. Section 16 is where a justice of the peace can sign a form 2. The family feels they were given advice that they could not approach a justice of the peace, but in any event they did not make an application to a justice of the peace. Section 17 authorizes peace officers to act, and in order to do so they must see the person behaving in a certain way, which is spelt out in the act, and there's been a judicial ruling.

The lady in this case would be quite overtly violent and bizarre. People would call police and when the police arrived, she would be quite calm and reasonable. Even though the police had corroborated disinterested third-party evidence to suggest that this lady was dangerous and was mentally ill, they could not act under the existing legislation. That inquest produced 60 recommendations, of which 15 were to the Ministry of Health. Again the jury in that case supported mandatory treatment of mentally ill people in the community in some circumstances, as well as ongoing monitoring.

**Dr Cairns:** I'll speak very briefly about two inquests: the Christopher Stephenson inquest and the Jennifer England inquest. I conducted the Christopher Stephenson inquest back in 1992. Christopher Stephenson was a young boy who was murdered by Joseph Fredericks, a homosexual pedophile. Suffice to say that many of those recommendations dealt with how to treat the mentally ill, who was and wasn't mentally ill, and what the act did and didn't do.

I have personally found it of great interest to follow, since 1992, the same recommendations being repeated over and over again in subsequent inquests that have taken place since then. In particular, in the Jennifer England inquest there was a great custody battle over who should get custody of Jennifer. Her non-biological father, despite being a schizophrenic, was eventually given custody of Jennifer. At the time he was given custody, he was on medication and was appropriate at that time. Unfortunately, once he got custody of Jennifer, he decided he did not need any further psychiatric treatment, went off all his anti-psychotic medications and, in a psychotic state, murdered both his mother and Jennifer. That inquest, held in 1998, reflected very much the issue that I think you're considering with regard to compulsory treatment in the community.

I'll leave my comments at that because we'd like to leave time for questions.

**1550**

**The Chair:** Thank you very much, doctors. That leaves us approximately about four minutes per caucus, maybe slightly more. We'll start the rotation with the Liberal Party.

**Mr Richard Patten (Ottawa Centre):** Thank you for joining us today and sharing some of your own experiences at inquests. I take it you've had a chance to study the bill. One of the ideas that has emerged—we have had some discussion among some of the committee members—was the idea of a preamble on the basis of the interpretation of what this means to certain groups and certain people, that all of a sudden the police are going to have these incredible powers to sweep people off the streets and that this broadens the basis of being able to deny people their human rights.

Before us, Dr Martin and Dr Eppel from the Ontario Psychiatric Association stated that in their opinion they felt this bill had the most restrictive criteria in terms of addressing the community treatment program.

In your opinion, and based on your own experiences, how would you position this and how would you deal with the question of, "My God, this is expanding the rights of officers, of police, to pick people up when they want to"?

**Dr Young:** Under the current bill the police have a number of potential directions they can move. The first, and unfortunately one that is taken all too often, is that they take no action. There are a number of reasons for that, but certainly anecdotally the most common complaint is that they see no purpose because they've done it before and they've met with frustration and they decide they can't do anything.

They can informally divert the individual to the care of a relative or another appropriate person, but again the story we hear repeatedly from the relatives are years of trying to get help and being unsuccessful in doing so. They can try to divert the individual to a hospital or a physician or a mental health facility, but they've got to get them there.

They can arrest them if there is a Criminal Code violation, but there may not be, and hopefully there isn't. That creates its own set of problems as to whether one then moves them through the criminal justice system or through the mental health system or both. They can, but right now only under the restricted section 17, take them if they have actually witnessed something. I think it's the grounds for the police to act on anything else as reasonable and probable grounds, so this is no greater power than exists with regard to anything else.

Clearly there need to be, and are, checks and balances on the police. They would tell you, and I hear it from them all the time, that they are one of the most scrutinized groups in society. There are those who would disagree with that and I understand their points of view, but what is being proposed is no greater than the powers that already exist. The problem is that without that they're in



a bit of a Catch-22, and certainly our experience has demonstrated that they very often may have no remedy. The Antidormi case is one of the saddest examples of that.

**Ms Frances Lankin (Beaches-East York):** If I can follow up on that, first of all, I appreciate your presentation and the amount of time you've put into thinking about specific cases and in general. You were talking about the efforts that have gone on over the last couple of years to educate people about the existing law, and yet as it's interpreted by lay people and has been applied, it's been seen as creating barriers to getting effective and needed treatment for people. I guess that's the fallibility of any laws: They are going to be interpreted by people.

A move to broaden in a significant way and seeing that way will also have its interpretation out there. I think some of the community, particularly the psychiatric survivor community, has legitimate concerns about what that means.

One of the things we heard from the Ontario Psychiatric Association: In discussion there was some agreement with the suggestion that perhaps, whether it be in a preamble as Mr Patten has suggested or in some other way, we clinically narrow the application of this legislation.

Although we've been provided with testimony here that the US experience studies show that there is an overwhelming success in the use of community treatment orders in reducing utilization, there is contrary analysis of the US studies. I think we'll hear later today or this evening a different perspective on that.

One of the studies often referred to, the Swartz study, in fact shows that only a particular subgroup of persons with mental disabilities can be helped under certain circumstances: long CTOs with lots of community support. There are a lot of qualifiers there. But it suggests that subgroup of people, not who have mood disorders but who have psychotic disorders. When I was speaking with a local East York group, a schizophrenia branch, they almost felt like this law needed to be put there even for a specific diagnosis.

I wonder if you have any thoughts or whether you have any agreement that we might be able to allay a number of fears as to who this law was never intended to be used for, although with human fallibility might be used for, if we introduce some kind of clinical narrowing of the application of the law.

**Dr Cairns:** Certainly from my review of the cases that we have conducted inquests into, they are a very narrow subsection that, in reflection, most people agreed were psychotic at the time. In that regard, probably our juries are at least supportive of that being the group we're looking at, as opposed to it being absolutely everyone who has a mental illness. All of those people clearly could not take care of themselves, clearly were recognizable by any of the people who were asked to review later.

Certainly at the Christopher Stephenson inquest, I had between 20 and 30 forensic psychiatrists and psychologists and they had their own views on how the act was interpreted. Absolutely nobody disagreed that this

individual was trouble. So I don't disagree with your comments. From our experience it would be this group of people that we particularly focused on.

**Mr Brad Clark (Stoney Creek):** If I may, the current Mental Health Act defines "mental disorder" as "any disease or disability of the mind." The Ontario Medical Association and the Ontario Psychiatric Association have suggested that that definition be changed and that it be defined as follows: "a disorder of thought, perception, feelings or behaviour that seriously impairs a person's judgment, capacity to recognize reality, ability to associate with others or ability to meet the ordinary demands of life in respect of which treatment is advisable." Do you have any comments in terms of whether or not the definition is sufficient as it is currently written, which would be in Brian's Law, or whether we should be going with the OMA and the OPA suggestions?

**Dr Young:** You put us in a difficult position.

**Mr Clark:** I have a habit of doing that.

**Dr Young:** I'm certainly not, at first blush, opposed to what I hear from the second definition that was given to you. I'll ask my colleagues. It is a difficult thing to define exactly what you're dealing with here. I think clearly there's a group that needs to be captured, and those are the people who are a danger to themselves and others. I would personally, at first blush, favour the second of the definitions, but that's a personal view.

**Dr Eden:** If I look back to the Antidormi inquest, Mr Michael Bay testified at the beginning of the inquest to explain to the jury the present legislation. As a coroner, I find that sometimes what juries don't say is as important as what they do say. One thing that Mr Bay stressed was the broadness of the definition. It's more than the simple diagnosis of mental illness, that very specific group that doctors talk about; it's broader and includes a wide range of cognitive impairments. I think that took the jury a little bit by surprise but they didn't comment on it. In fact, if I look at the context of their recommendations, and this is simply what I read into it, my understanding would be that they supported having a definition that is reasonably broad and certainly not limited to specific diagnoses, a functional definition of cognitive impairment rather than a very limited one.

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**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Mr Chairman, on a point of clarification: I'm just a little bit concerned that as we start getting into specificity of definitions and the group that we're trying to capture with this legislation, we need to be sure we're using correct terminology. I'm not sure whether my request for clarification would be to research or to legislative counsel or just to whom I should address it. For example, my understanding is that the legislation would be particularly appropriate for a very narrow group of people who are schizophrenic and who are not treatable with medication. That's very different from the definition of "psychosis." Somebody with a mood disorder or bipolar disorder can certainly be in a psychotic state but, as I understand it, would not be appropriately dealt with



with this particular legislation. Of course, the definition change that Mr Clark has just suggested, which I personally think we should be looking at, would apply to the entire Mental Health Act and therefore would not be exclusively applied to the group of people that Brian's Law is attempting to address. I just would like to make sure that as we proceed, we're focusing on terminology that accurately describes the group of people we're wanting to deal with.

**The Chair:** Ms McLeod, are you asking research to bring back some kind of discussion paper, definitions from other jurisdictions, the contrast of the apparent effect of changing the definitions, or had you something else in mind?

**Mrs McLeod:** I'm not, in all honesty, quite sure who to direct the question to. I don't want to lay an onerous degree of research. I just know that in the research I've been doing into the legislation, there are recommendations put forward as to whom this applies to. But even at the very least, I think we need to understand the difference in terms of "schizophrenia" and "psychosis" and the broader definitions of "mental disorder" which would apply to the entire Mental Health Act.

**The Chair:** I think that's a fair question to ask research. We'll certainly ask them to bring back their thoughts on that question, if they'd be so kind.

**Ms Lankin:** Mr Chair, just one quick request of Mr Clark. The possible proposed definitions that you just read into the record were not available when we met with the OPA on Friday. I'm wondering if you could share those with committee members.

**Mr Clark:** Absolutely.

**The Chair:** Gentlemen, that takes us to the end of our half-hour with you. Thank you very much for the unique perspective you brought to the committee and for taking the time this afternoon to come before us.

**Dr Young:** Thank you very much. We'd like to thank the committee for your attention. Unfortunately, we have further engagements, so we'll have to leave. We mean no disrespect to either the committee or anyone else who's following us.

#### CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

**The Chair:** That takes us to our next group, the Canadian Mental Health Association, Ontario division. We welcome them to the committee today. Again, we have 30 minutes for your presentation, to be divided as you see fit. Once you've settled in, perhaps you could introduce yourselves for the purposes of Hansard.

**Ms June Rickard:** Chair and members of the stranding committee, I'd like to introduce the three of us first. I am June Rickard, and I'm replacing Janemar Cline, who would have been here today except for illness. I'm on the board of directors of the Canadian Mental Health Association, Ontario division. I'm a volunteer. I have with me today Patricia Bregman, who is

a lawyer and on the staff of the CMHA, Ontario division, as manager of policy planning and information services; and Glenn Thompson, who is executive director of the CMHA, Ontario division.

The CMHA, Ontario division, thanks the committee on general government for giving us an opportunity to present to the hearings on Bill 68 as expert witnesses. We hope that our presentation will provide you with valuable information. We will limit our oral presentation to approximately 15 minutes so that we have an opportunity to respond to any questions you might have.

I'd like to first of all briefly describe the CMHA, Ontario division. We have included a more detailed description of the CMHA in our formal submission. In order to save time here, it may be sufficient to indicate that the CMHA is one of Canada's longest-serving charities, having been started in 1918. We structure the efforts of our volunteers and staff to meet our overall goal of impacting mental health services, and we provide public education to assist individuals to avoid more serious illness through early intervention. Our work falls into four areas: research and policy development, support to service delivery agencies, public education and advocacy.

We believe that one of the CMHA, Ontario division's unique contributions is our social research and the policy and position papers which result therefrom. These papers are developed on a wide variety of topics of concern to persons with mental illness, as well as to legislators, policy-makers and administrators in the mental health system.

In the 1999-2000 year, social policy research was conducted in four areas. A mental health legislative review looked at all mental health legislation in Ontario and gathered similar information from other Canadian provinces and other countries. The result is recommendations for more comprehensive and integrated mental health legislation for Ontario. A drug benefits task force studied current public and private drug benefits programs and summarized the implications for persons with mental illness. The continuity of care task force prepared a paper on the role of assertive community care treatment teams, ACTTs, in providing community care for persons with serious mental illness, reviewed the historical evolution of these teams and made recommendations about the role of ACT teams in the future. The housing task force prepared a comprehensive document on housing choices for persons with mental illness, especially in relation to divestment of provincial psychiatric hospitals. Some of these papers are expected to come to our board in June for final approval. The topics will give members a flavour of the breadth of our work.

We are much concerned with the degree to which negative public attitudes toward the mentally ill affect their recovery and their reintegration into our communities. We continue to encourage the Ministry of Health and Long-Term Care, insurers, employers, foundations and the media to play a more active role in public education about mental illness and mental health.



The CMHA, Ontario division, is pleased that the government continues to move forward with the comprehensive reform of the mental health system, focusing on community-based services. We are concerned that the proposed legislative reforms will put additional pressures on our already overextended system. In our submission to the Brad Clark review, a copy of which is included in the package we have presented you with, we recommended that the minister provide an additional \$351 million in funding for the transition to community-based services. This funding will be essential to implement many of the provisions in Bill 68, as it is to any major shift to community-based care.

It is our position, and has been throughout the various consultations, that true mental health reform will put into place a full continuum of services, ranging from services for persons with severe mental illness to health promotion and prevention programs designed to maintain and preserve mental health. This is consistent with the approach the government put forward in *Making It Happen*. We strongly urge the government to maintain a balanced approach to its mental health reform so that all aspects of the system receive the necessary funding.

We look forward to continuing to work with the Minister of Health and Long-Term Care and ministry staff to carry out the plan set out in the two *Making It Happen* documents.

The Canadian Mental Health Association, Ontario division, supports the need for legislative reform. Our position was provided to the Minister of Health and Long-Term Care in our submission made last month as part of the consultation chaired by Brad Clark, the parliamentary assistant to the minister.

Our primary recommendation was that the legislative reform should create a new framework for the delivery of mental health services in the community, including mechanisms to ensure that services are available across the province. Some of the amendments that we recommend today to Bill 68 are directed at achieving that goal of universal access to care.

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We will obviously not attempt to discuss these amendments in detail. We will leave them with you to review more fully. We would be happy to discuss any of them with you or the ministry staff as you proceed through this process.

We thought it would be helpful to summarize the themes that you will find in our recommendations.

Specifically, we recommend that the mental health legislative reform:

- (1) Support a continuum of community-based services. It needs to include the continuum of services, from services to treat the most seriously mentally ill to health prevention and promotion.

- (2) Amend the existing legislation to make provisions which are currently subject to misunderstanding more clear to everyone, from the individual to health practitioners. There is universal agreement that many of the existing provisions are confusing.

I now pass this presentation over to Ms Bregman.

**Ms Patricia Bregman:** As you can see from the length of our recommendations, we couldn't possibly cover all of them in half an hour. I think you'll see that that some are very technical and some are more substantive in nature. I'd like to repeat the offer to assist the committee or the staff at any time.

Despite the list, we're not sure that it's comprehensive. As you review the legislation over the next few weeks, it's likely there will be additional amendments in Bill 68 that are identified in areas which are unclear or which conflict with other statutory provisions.

We think that Dr Young gave quite a good lesson in how important it is to make sure that the legislation is clear, because we can pass what you think is going to be in the new legislation, and yet if people don't understand it, it's not going to work.

We've also provided you with several papers prepared earlier by the CMHA, Ontario division, and the national CMHA on issues relevant to Bill 68, including community treatment orders. In particular we encourage you to look at the literature reviews that we did in January and February of 2000 looking at community treatment orders and the links between mental illness and violence, as well as our submission to Brad Clark.

As you know from previous submissions, the CMHA, Ontario division, has taken a formal position opposing the use of community treatment orders. Our position is set out in the documents we have provided you with. In this submission our effort is focused on how to make community treatment orders work, and we have presented many proposals and important detailed amendments on all aspects of the legislation.

We're here to help you make effective legislation, not to go back. You've got our position. We're now on a different page.

On reviewing these provisions, we have identified a number of areas in which amendments are necessary. However, before briefly highlighting the types of recommendations we are making, we want to comment on the provisions relating to community treatment orders from the perspective of workability.

As we stepped back and looked at them as a totality, it appears as though there are some major problems with the way in which they are structured. We acknowledge that our interpretation may be incorrect; however, the fact that we can draw the conclusions that follow indicates that there needs to be more clarity in the legislation. We're offering you our analysis to assist you.

Looking at the legislation as a whole, it seems to run counter to sections of the Health Care Consent Act. The community treatment order is based on consent by substitute decision-makers, even though there is no apparent authority for them to give consent to the order. For your assistance, we'll give you our analysis.

There is a distinction between "treatment" and "order" made in the legislation. The terms "community treatment order" and "community treatment plan," however, tend to be used interchangeably. They're not. There is a defini-



tion for “community treatment plan” but not “community treatment order” in the Health Care Consent Act.

Bill 68 amends the Mental Health Act to adopt the definition of treatment found in the HCCA, so we’ve now got a linkage between the two acts. Under that definition, “treatment” does not include admission to a hospital; it does not include an assessment for capacity. The fact that they are not subject to the legislation does not mean that consent is not needed. The common law still requires informed consent. The problem arises because substitute decision-makers appointed under the authority of the Health Care Consent Act can only consent to treatment that falls within the scope of that act. There is no common-law power for that particular group of substitute decision-makers. Similarly, only attorneys for personal care or court-appointed guardians have the authority to consent to treatment falling outside of the Health Care Consent Act, assuming they have been given that authority specifically.

There is no authority under the Health Care Consent Act to allow a substitute decision-maker to consent to a community treatment order, since the definition is found only in the Mental Health Act. It includes the plan, but isn’t the plan. The community treatment order, as defined, includes terms and conditions that are similar to the ones for admission to hospital.

To take you to the provisions of the Health Care Consent Act, you can consent to admission to a hospital, under that act, where treatment is to be given. But if an incapable person objects and it’s a psychiatric facility, you cannot have a substitute decision-maker consent to admission. If you take that analogy, if a person would object to the community treatment order, and you see it as similar to hospitalization, then the substitute decision-maker would not have the authority to override that. I could talk about the lawyers in more detail, but I’m trying, in a sense, to give you a picture of where we see some problems in how it’s structured.

I’m going to skip over part of it to give you time for questions. I also want to point out, though, because language is so important, that there is some confusion on the use of the term “order.” We’re all familiar with physicians’ orders, which are written to direct specific treatments. The term “order,” however, can also be a legal order which is enforceable. I think it’s critical that it be clear which one that is, because they have very different implications for rights advice, and you’ll be hearing from somebody from the US later. But it’s important to point out that where a community treatment order is used in the US, it is an order and is granted by a court or tribunal in most cases.

I’m going to skip down to page 18 and talk a little bit about some of the proposed amendments we want to make. Some of them deal with establishing a core set of mental health services that must be available through the province. Again, we think it’s critical to have universal access to services.

The second is to require a two-year review of community mental health services, including community

treatment orders, to determine if they are effective and for what population. It’s important that resources be used effectively, and this type of research would support a best practices approach to service delivery.

In terms of the amendments that deal with inconsistencies in the legislation, we can use as an example the proposed subsection 15(1.1), which allows a physician to issue an order for an assessment if the person is apparently incapable, provided the substitute decision-maker consents. We propose that the word “apparently” be removed. The physician should either find that the person is capable or incapable. Under the Health Care Consent Act, a substitute decision-maker has the authority to make substitute decisions only for a person who is found incapable. So that section, as written, would not work.

Finally, throughout the document, in our April submission to the mental health legislative review, we raised a number of questions where it’s not clear how the provisions in the legislation will actually work in practice, where it’s not clear what is intended by the section. We know from experience that legislation that is clear and easy to understand is far more likely to be effective.

We hope the government will consider our questions carefully and use them as a way to identify sections where changes may be made for purposes of clarity. I think I’m going to stop, unless people want me to go on, and leave you some time for questions, because I see the time is short.

**The Chair:** All right. Thank you very much. That leaves us four minutes per caucus. This time the rotation will start with Ms Lankin.

**Ms Lankin:** Thank you. We all appreciate so much the amount of work you’ve put into this and the extensive recommendations you’re making. I assure you we’ll go through them in detail. Just picking up on a couple, through the course of these hearings I have been advocating, preliminarily at least, some provisions to institute a minimum level and type of service in all regions of the province. I think that’s in accord with what you’re suggesting.

I have also been raising a concern about the word “apparent” in “apparent incapacity.” Doctors have to find people capable of giving consent every day, and I think that sets a different legal standard. I didn’t understand why that was included.

One of the things I have also been proposing is that we establish something that might be called the office of the mental health advocate—like the office of the child advocate—different and apart from the Psychiatric Patient Advocate Office, which plays a different and important role, but one that would look at the system overall, one that would have the job of monitoring and reviewing the system, reviewing these kinds of legislative changes and how they’re being implemented and how they’re working, and reporting back to the public and the Legislative Assembly through the ministry to ensure there is accountability.

For example, one of the things I’ve read—and I think we’ll hear later about the US jurisdiction—is that while



many have legislative frameworks like this, the laws are in place but they've abandoned the use of them because they found them impractical. It would be good to have a monitoring system in place. Do you have any thoughts or comments about the establishment of such an office?

**Ms Bregman:** I think we would support that type of central coordinating body. We do have a reference in our brief to having some system in place that will make sure services are available and able to be utilized by people.

One of the complaints people are constantly making is that they seek service and don't get it. I think it's very important for this committee to remember in deliberations that this act is not only about the very small number you're seeking to have mandatory treatment imposed on, but you really want to make sure that this act makes services available for people who are voluntarily seeking service as well. There is a large portion of the public who want services and right now are facing difficulties getting them in parts of the province.

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**Ms Lankin:** In fact, one of the concerns you and others have raised is that those under direction to have mandatory treatment where scarce resources exist might in fact bump people seeking voluntary treatment, and there could be a problem.

**Ms Bregman:** We have recommendations in here to deal with that, because we want to make sure that does not occur, that we don't shift people out.

**Ms Lankin:** Another monitoring provision I've been thinking about is triggered by the section that says CTOs can only be put in place where community resources are available. Wherever we find they are lacking, I think there should be automatic reporting so that we see those problems. I guess that speaks to the recommendation you put forward that over \$300 million needs to be invested in community resources. Do you see that as necessary to making this legislation work and being effective?

**Ms Bregman:** Absolutely. There is transitional funding, but you're going to be putting a large impact on the system by suddenly bringing into the system people who are currently outside it. It's going to take a lot of money for education, to make sure the services are there, for monitoring and for quality assurance. Putting together this kind of system is hard.

I should say that one of our recommendations is that when you pass this you give about a year to implement it. Don't have this bill come into effect the day it's passed, because you'll create chaos that I think will undermine all your efforts. It really is going to take a lot of work. I think there's a lot of spirit of co-operation out there of people who want to make it work, but it's going to take time and it's going to take a lot of money.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** Thank you for your presentation. You've indicated today that you're focusing on how to make community treatment orders work, or how to enable us to come up with workable legislation. You raised the issue of a person's substitute decision-maker and the issue of consent. You've raised a problem that basically under the Health

Care Consent Act, if an incapable person objects to admission and their substitute decision-maker does give consent, that admission cannot occur. How do we get around that problem? I got lost in the legal interpretation. The proposed act, I assume, gets around that problem. Are you suggesting it doesn't?

**Ms Bregman:** It doesn't, actually. It doesn't deal with that problem. You'll see in our brief that a number of provisions aren't dealt with. One that might interest the committee is section 11, which says that even if somebody needs to be admitted to a hospital, the hospital doesn't have to admit them. One of our suggestions is that you may want to look at whether something has to be done about that provision, because when you read the inquests you'll see a lot of people being turned away from hospitals and then dying. I think you'd have to get a legal opinion as to what you can do about that provision. We can't really give you that legal opinion. We're pointing out that here is a problem, but I think legal counsel from the ministry will have to help you sort it out, because there's a lot of balancing to be done.

**Mr Barrett:** Certainly on the hospital admission, any psychiatric facility would do a comprehensive assessment. It's not a fait accompli that someone shows up at the door and is automatically admitted to the hospital. In fact, much of the purpose and reality in other jurisdictions that have community treatment orders is that there's much less hospitalization.

Is there anything further in this legislation, or changes that should be made with respect to protecting the rights of people who would be subject to community treatment orders?

**Ms Bregman:** We made a number of recommendations. For example, there's nothing in this legislation that deals with the confidentiality of the records of people who are in community mental health services, let alone under a community treatment order. So there will need to be changes to make sure the information is protected and not shared inappropriately. There are issues about the quality assurance of the services, issues around the fact that you seem to have a community treatment order that has two components; one is services and one is supervision. But there's not a lot in the legislation about how that supervision component of the order is arrived at.

Finally, we're very concerned about the liability issues relating to families. To be honest, I can't recall the section, but there is a provision in here that says that the substitute decision-maker or the individual has to undertake to comply. We think that's an incredibly heavy burden on the family or the substitute decision-maker. Obviously, if the person were going to easily comply, they wouldn't be in that situation. I think to say that the family suddenly gets the whole burden is quite problematic.

At the end of the day, I guess what we would suggest to you—and this is not an attempt to say, "Don't legislate"—is to really give some thought to what we're recommending, because when we went through the legislation there were so many areas in which nothing has



been done or there are gaps or inconsistencies. I think you would lose so much by passing bad legislation that we hope you'll really take a look and think about what we're proposing in here. All of it is intended to be constructive and helpful. We're certainly happy to continue to work with you, but we would give that warning.

**Mrs McLeod:** I appreciate your presentation and the depth and thoroughness you've gone into, and also the work you've done prior to this in the background information and the research on community treatment orders that you provided to us.

I'm not sure where to start, because I'm trying to read quickly through the amendments. As you say, many of them are very detailed and very technical. I do want to note one which is of a less technical nature and then, with the Chair's permission, I know my colleague has a question. I'd like to ask for some clarification from the committee as to how these amendments generally will be dealt with.

I want to note recommendation 6, that the legislation should be amended to prohibit the inclusion of physical or chemical restraints as part of a community treatment plan. Obviously that comes from the concern we've heard that enforcing compliance will mean inevitably using force. There are alternatives to using force to enforce compliance. Is that fair?

**Ms Bregman:** Yes. I think it's that and the fact that the Mental Health Act recognizes there's a risk in the use of restraints. There have been a number of deaths, particularly in recent years. There are all kinds of controls put on these restraints in a hospital. Using them in the community, none of those controls will be available, and so the risk of harm and danger and potential death increases significantly. We think it needs to be made very clear that a community treatment order is not about restraint, which is not treatment. That's really important. Restraints simply restrain somebody; they're not about treating them.

**Mrs McLeod:** You also mentioned a two-year review. Is that in your amendments?

**Ms Bregman:** It is in the amendments.

**Mrs McLeod:** I'll find it then.

**Ms Bregman:** To be honest, it will probably say two years, but we are recommending ongoing review. I think it's important that you do something to make sure it actually works.

**Mr Patten:** This is an enormous amount of work on your behalf, and obviously I've not had a chance to go through it. However, I would like to ask whether you've had the benefit of the experience in Saskatchewan, from one of your sister provincial divisions. While their experience is relatively new, has that been of use to you as you look at this legislation?

**Ms Bregman:** It's been of help, but the reports we're getting back are that they have very little use and they're not finding it particularly helpful, which is why we suggest a review. If you look at the literature review we did of the community treatment orders, for the most part there really is no evidence that they are effective. It shows that what is effective is intensive, coordinated

services and making sure those are out there; as opposed to the mandatory component, making sure that anybody who needs and wants the services can get them when they need them.

1630

**Mr Glenn Thompson:** I guess what I would infer from the Saskatchewan experience—and it's important to realize that their legislation is different from the starting point. So when you pile on these different amendments, you have to sort of compare where each one begins, and they are in a different place than we are here in Ontario. But what I'd infer from it is that at least they picked their target population and they're clear about who they're attempting to intervene with, and it isn't very many people. And lots of protections and all that kind of thing are applied.

Every psychiatrist in Saskatchewan has now used a community treatment order, as I understand it. So they can be made to work there. I think a lot of the discussion we've heard, both here today and about this piece of legislation, is that we're not quite sure what doorway we're trying to open to which event. Some people have presented to you the suggestion that this legislation ought to be applied to virtually all persons who have a psychiatric disability. I think it's really important for the committee to be absolutely clear about who this is intended to affect before you go in. Regardless of the impact on individuals, you're liable to have a system wanting to expend tremendous amounts of money on people who don't need it for this part of their care. They may need it for a lot of other things.

**Mr Patten:** Good point.

**Mrs McLeod:** Mr Chair, I know this may seem a little unusual, but the way we're going about dealing with this legislation is a little unusual. I think one of the reasons we're having hearings before we've had second reading is so we can look at how the legislation could incorporate some of the recommendations that have been made.

From the perspective of the opposition—I'm not sure if Ms Lankin would agree—the technical amendments here are a bit overwhelming to deal with. I think some of them would be of real concern to government because of the inconsistencies CMHA has pointed out between, for example, the substitute decision-making authority that's built into Brian's Law and the inconsistency with what is currently in the Consent to Treatment Act.

So I'm wondering, before the committee hearings conclude, whether it would be possible to get some comment from Ministry of Health counsel or legislative counsel to the committee as to how these amendments might be approached, might be dealt with, might be incorporated—if we could understand the ones that appear to be totally out of sync with what the government is seeking to do, and if there are others that would be really important technical changes. It would be enormously helpful, and it would save a lot of duplication as we look at preparing amendments, if we knew there were areas where the government wanted to address the recommendations that are here.



**Mr Clark:** At the last meeting, Frances, myself and the rest of the committee talked about it. I've asked the ministry counsel to work with all parties. So if you have proposed amendments or if you'd like to see some changes or you have some confusion about a specific clause because of the technical wording of it, feel free to contact the ministry counsel. They will work with you on your amendments. They will give you the ministry's perspective on it so that you can prepare your amendments and come back to the committee with them.

**The Chair:** Perhaps, if I might, I think Mrs McLeod was asking to go one step beyond that. When a group like CMHA brings forward their own proposed amendments, the ministry legal counsel might develop a response rather than force any of the parties to independently do their own research and try and reconcile the difference.

**Mr Clark:** I'd have no difficulty with that.

**The Chair:** Thank you very much for presenting not only your oral presentation but a very detailed written brief as well.

**Ms Rickard:** I would like to thank the members of the committee for listening. As we said before, we're very eager to work with government and to assist you in any way we can.

**The Chair:** That takes us to our next presentation this afternoon, and that will be from the Psychiatric Patient Advocate Office. We would invite the representatives from the advocate office to come forward to the witness table.

**Mr Clark:** If I may, with respect to talking about the amendments and suggestions in the briefs that are coming in, perhaps we might want to talk about scheduling a time at the end of the hearings so that we have an opportunity for ministry counsel to come in and talk about all the suggestions and changes and their position on them, and we can go from there.

**The Chair:** All right.

**Mr Clark:** So that we're all together as one committee being briefed.

**Mrs McLeod:** That sounds like an excellent idea. Could I just—and I apologize, but I have to be in Brantford fairly shortly. I'm sure there will be some amendments we may want to propose that the government may not want to bring forward. I don't know that, but again, you're suggesting we meet together, talk about what amendments are jointly coming forward prior to us going to legislative counsel with any separate proposals for amendments?

**Mr Clark:** No, each caucus can do their own thing in terms of which amendments they would like to look at. I'm suggesting that at the end of all these presentations we get together with ministry counsel for a briefing on all the requests, amendments and recommendations we've received and some of the amendments you've proposed, so we can put it all in one package.

**Mrs McLeod:** With that in mind, it would also make sense if we did hold back putting forward amendment proposals to have legislative counsel draft them until after that kind of meeting. Again, I'm thinking about the duplication. So if we could be assured that we'd have

time to present proposals to legislative counsel subsequent to that meeting, that would be really helpful.

**The Chair:** I think that's reasonable. If I may, we'll leave it to the subcommittee to find a time that is mutually convenient and we'll make sure that's one of the guidelines we try to incorporate.

**Mrs McLeod:** Thank you.

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Chair:** Sorry about the momentary delay. Thank you very much for joining us. Again, we have 30 minutes for your presentation today. I wonder if at some point early in your presentation you could make sure you introduce yourselves for the purposes of Hansard.

**Mr Vahe Kehyayan:** Good afternoon, Mr Chair and members of the committee. My name is Vahe Kehyayan, director of the Psychiatric Patient Advocate Office. With me are Mary Jane Dykeman, legal counsel, and Barbara Cadotte, systemic policy adviser of the PPAO.

We welcome the government's plan to consult with the community regarding the amendments to the Mental Health Act and the Health Care Consent Act. We have taken part in the next step, the consultation process, and have made written submissions in that respect as well. You have before you our submission, which outlines a number of issues with respect to the legislation and our feelings about it.

By way of context for those members who do not know the PPAO very well, the PPAO has been providing advocacy and rights advice services in provincial psych hospitals since 1983, after the Minister of Health at the time introduced us in the Ontario Legislature for this specific purpose. It was an all-party agreement at the time that the office would exercise its advocacy mandate in independence, without any interference from the ministry or government. This independence is assured through a memorandum of understanding which is signed between the program and the minister. At the time, I believe it was Ms Lankin.

**Ms Lankin:** I remember that.

**Mr Kehyayan:** In this manner, the PPAO is not here to speak on behalf of the ministry but rather on behalf of the mentally ill patients who have become clients of the PPAO in all these years. Annually we represent or respond to about 7,500 cases of rights advice situations triggered under the Mental Health Act and the Health Care Consent Act. These rights advice situations may involve as many as 9,500 contacts with the patients. We also respond to 4,500 advocacy cases each year, related to the therapeutic, legal or social aspects of patient care, treatment or observation.

These advocacy concerns arise from a compromise and/or threat, or potential threat, to a patient's rights or entitlements under mental health legislation or the Charter of Rights and Freedoms.

So altogether, the PPAO on an annual basis has contact with 15,000 patients, and these are documented



situations. It is on the basis of this breadth of experience and knowledge that we have prepared our submission, which outlines how the proposed amendments, if carried through, would affect the targeted population.

For specifics on these concerns, I'm now going to turn to Mary Jane, who will take you through the high points of our submission. We'd be pleased to answer any questions you may have.

**The Chair:** Thank you very much. We've got lots of time for questions, let's say eight minutes per caucus.

**Ms Lankin:** They're not finished yet.

**The Chair:** I beg your pardon. I jumped the gun there.  
1640

**Ms Mary Jane Dykeman:** I realize we have limited time, so I'd just like to touch on a number of points in the submission. We have provided you with a summary as well. We thought we would first look at a couple of general themes before moving to speak about a few select amendments. Obviously it's not possible for us to sit here today and go through the provisions clause by clause; we thought the themes first and then a few things from the Mental Health Act and the Health Care Consent Act.

The first theme is legislative reform. Obviously, as a provincial body that looks out for the rights of psychiatric inpatients in the provincial psych hospitals, we've been watching very carefully to see what type of legislative reform would be forthcoming. We recognize it is part of this comprehensive mental health reform that's required.

When Dan Newman did his report some time back, he set out several items about the legislation having to support the "creation of an integrated and coordinated mental health system" for both the hospital setting and in the community—very important to us.

Beyond that, one of the most important ones we have to focus on is the access to services. We get calls all the time from individuals, both in the hospitals—we do not have a public mandate per se, but we field a lot of the very general calls from individuals who are looking to remove some of those barriers.

Then lastly, of course, the emphasis on public safety, which I'll speak to in a moment.

Our only concern is that the proposed amendments may not cover the full realm of the legislative review that we understood might occur. I think the biggest thing is that the barriers have to come down. It should be serving the needs of every Ontarian facing a mental illness and not simply that small category of the seriously mentally ill who would be taken in by the community treatment order scheme.

Moving on briefly, I will say that we have always felt that while the present legislation is not without need of some reform, it is adequate. We've always thought that the key is education. I know there's been a fairly widespread education movement at the behest of the government in the form of Michael Bay's education project. He has been on his road show for quite some time and I think some of his findings confirm what we see. We get a lot of calls from the public, from rights advisers in schedule 1 facilities, from concerned family members,

saying, "We're not really sure how it all plays out." I think when we turn to inquest recommendations and the like, education is always needed.

The lack of resources in the community is the second theme we've looked at and is another one that the Ontario government has pledged to address. One of the essential things we need to be focusing on is what's going on right now. We have the implementation of ACT teams. We would like to see those types of things have a proper evaluation, given the resources that have been poured into them, before moving on to what we might consider more coercive measures.

The other aspect, in dealing specifically with the CTO scheme, is the enormous number of resources that will be required to put it in place: implementation, education, support, enforcement and the like. It raises a couple of concerns. By now I'm at the top of page 6, and we've set out a couple of them. We would hope that that type of scheme does not take the place of improving the supports that need to be in the community for everyone. We don't want to see it divert services and resources away from the other mental health consumers who are not subject to the CTOs. Those may be people who are already in the community or who would like to be residing in the community. The focus of scarce resources on compliance and policing medication is fairly troubling as well. Instead, we think some of the focus should be on improving and extending access to the best treatments that are available.

I presume that Patricia Bregman, although I didn't hear her full presentation, pointed you to quite a bit of literature. We've made a reference to that, so I'll move on from there.

The emphasis on public safety has certainly been a priority in the mandate of this government. The only concern there of course is that we're dealing with a population that is heavily stigmatized already. We would hope that the emphasis would be on community services, recognizing the fact that there is scientific evidence to show that the mentally ill are more likely to be the victims of violence than the perpetrators. I in no way undermine some of the very tragic situations that have played out across the province, which may be the reason for sorting out this type of legislation; by no means, but it's always a commitment on our part to try to take away the stereotypes. Unfortunately, in the course of Brian's Law, we have seen some of those stereotypes reinforced.

Informed consent: This permeates both the Mental Health Act and the Health Care Consent Act. A quick comment: It's obviously a doctrine that's well known at common law. It's been codified in the Health Care Consent Act in Ontario. It's supported in the case law, and I've cited some of it here. We don't need to go into any detail—*Malette v Shulman*, for example. You may be familiar with the case of a Jehovah's Witness who was a card-carrying Jehovah's Witness, wanted to refuse a blood transfusion, had the support of the daughter while her mother was in an unconscious state, and the physician proceeded to treat her in spite of this prior expressed wish. He was found to be liable for that act. I raise that because obviously it ties very strongly to the



discussion later about the Health Care Consent Act and I should say the hesitation with which we would want to overturn a prior capable wish.

The last theme is the charter. I wouldn't purport to be providing you with legal advice. You have very able counsel to do that and you'll be seeking their input, I'm sure. But when we come to section 7, life, liberty and security of the person, we've often focused on security of the person as being of great importance—the right to bodily integrity, the right not to have forced treatment. I understand that the thrust of the proposed amendments could turn the charter argument to the issue of liberty.

I recognize—and I think we've had anecdotal evidence even in the calls we receive and perhaps in the clientele we serve—that there could be a situation where a person has made a prior capable wish not to be treated with psychotropic medication. They might find themselves incapable, in a provincial psych facility or a schedule 1 facility. A prior capable wish is there. Nobody will touch it. Family may not be there to say that it was not a capable wish.

In a particular case, we recall that the individual ended up with a very poor quality of life, in restraints 24-7, really looking at declining prospects down the road without some kind of action. As I recall, I think eventually a family member was found, the capable wish went before the board and it was found not to have been a capable wish. The person was treated. It was one of the success stories.

I point to it because I think we have to acknowledge that those situations exist where circumstances might change, better medication might be available. As it stands right now, a substitute decision-maker can take the prior capable wish to the board and ask for permission to depart from the wishes. What the Health Care Consent Act would propose to do, through Bill 68—I realize I'm skipping ahead but I think it's really integral to talk about it now—is to allow the physician or the health care practitioner to take that forward and have it overturned. There may be sound reasons in rare circumstances to do that, but I would just urge some caution in recognizing that abuses can occur.

One example we've set out in our brief is about the use of ECT, electroconvulsive shock therapy, where an individual might have said in the past, "Look, there is not any possibility that I would ever consent to it." The inevitable happens, they become incapable, and then there's some kind of discussion about whether or not—at least under this legislation, not only would the substitute be able to go and ask to depart from the prior capable wish, which we hold as an inherent value, but also the physician could ask.

I think it opens up a certain number of abuses. I realize there is some support in case law. We haven't gone into that here. I'm sure you will have heard a bit more about the Benes case, but it's just a caution.

1650

Speaking to the amendments to the Mental Health Act, we've picked out several. You may have heard quite a bit about the removal of the word "imminent" from the pro-

posed section 15(1)(f) and throughout. We haven't done an exhaustive analysis of every section where "imminent" would come out, but I think some of the argument would apply.

It's our position that what's in sections 15, 16 and 17 right now, the means by which a person can be brought in for a psychiatric assessment, are quite reasonable, education being the key. Families need to know how to get to a justice of the peace, if that's an option, what information to take forward. Physicians need to be aware, and should be aware through their colleges as well, that every physician in the province can sign a form 1 and have a person brought in for psychiatric assessment, and also the powers of police—peace officers in the act—to know when it's appropriate to bring that person in, and I've heard a number of individuals say publicly that it is a fairly low threshold, but that doesn't assist us unless the education is out there.

A second thing: past successful treatment as grounds for psychiatric assessment under sections 15(1.1)(e) and 16(1.1)(e) as well: Again it expands the criteria to allow a person to be detained against their will. This is in the case of a physician who wants to have a person detained, or the case of the justice of the peace. Our view is that once you combine those two elements I've brought up, once you remove "imminent" you lower the threshold, and then you also have this means of bringing the person in by virtue of a successful treatment in the past, some of those rights are going to be eroded.

I want to move on very quickly because I realize I'm taking up a fair share of your time, to the quality of rights advice. I understand some other individuals will be speaking to this today, so I won't belabour the point.

One of the concerns is, we do some training of the rights advisers in the schedule 1 facilities. We have our own rights advisers and patient advocates in the nine provincial psych hospitals and at Queen Street which is a former provincial psych hospital, now part of the Centre for Addiction and Mental Health. That is their job. The rights adviser provides rights advice, whereas in schedule 1 facilities, in the psych wards of the public hospitals, you have individuals who have rights advice as an add-on to their duties.

The only caveat, in accordance with the legislation, is that they not be part of the treatment team. There's a list. That's fine, but when you add that duty on to a person's regular duties, you might have a social worker not involved with the particular individual who provides rights advice; it could be any person in the hospital providing it. One of the concerns is a very high turnover, not as much from our point of view of having provided quite a bit of rights advice training over the past couple of years, but we see by the numbers that the high turnover changes the quality of rights advice that's delivered.

I personally field a lot of the calls from the rights advisers in the schedule 1 facilities, and my assessment is that they don't even have the exposure to the number of rights advice situations. There are eight situations at law where rights advice must be given. So it is a concern that



there's a different standard for public hospitals. The reason we raise it here is that there does not seem to be in the proposed amendments a real quality assurance mechanism with respect to rights advice.

A couple of other comments about rights advice as well: We notice that rights advice is given upon renewal, which is excellent. When a CTO is renewed, rights advice would be required. But it does say that as long as a physician has examined the person within a certain time frame, the CTO can be renewed even if the person is in the community. What's lacking, from our point of view, is what happens in the community. I heard Patricia Bregman speak to some of the abuses that can occur in the community, and I think this is one area where we would have to ensure that the same quality of rights advice, and rights advice itself, would be available to the person. It's easy when the rights adviser gets notice from the physician, which they must have, walks down the hall to the unit and provides that service. It's a whole different story if the person is fairly far-flung from the facility.

A technical item, rights advice to the person or the substitute decision-maker, and I'm now at the bottom of page 12: It's the proposed section 33.1(2)(e). We weren't certain whether this was a drafting error. We didn't know whether it meant to say that rights advice should be given to the person and their substitute, which would be fairly consistent with the recent case law in the Court of Appeal of Ontario. It says advice to the person or the substitute, and there's always a concern that you would choose the substitute in lieu of the individual.

If it were to be "and," it raises a different conflict from the point of view of who will provide the rights advice to the substitute, because in the Court of Appeal they weren't entirely clear. It was felt that perhaps the duty to provide information to the substitute about their duties and obligations would rest on the person who was proposing the treatment. It made sense to us.

If it's to be the rights adviser, then you may create a situation of conflict, and that is a concern. The rights adviser, by way of example, might be the person who provides rights advice on the one hand to the individual who wants out of the particular item that's in front of him or her, and then on the other hand, with the substitute decision-maker you might be asking that the substitute be given information by the same person, with the end result being that the rights adviser would be assisting two parties who could be adverse in interest.

It's not certain to say that every family member who becomes a substitute decision-maker will be averse in interest to what their loved one would like, but we know it happens. It happens all the time. Families would like to see their loved ones treated; you may have an individual who does not want to be treated. In this new scenario, with a prior capable wish being set aside, you might have the rights adviser in a situation where he or she would be providing advice on how to deal with that situation to the individual who'd be affected, whose prior wish would be revoked, in essence. On the other hand, you would be having that rights adviser assisting the individual to act

against the wishes of the patient. So it does potentially raise a conflict. Again it may be a drafting issue and we'd certainly be happy to know and to assist if we could on that.

We also notice that rights advice can be given to a capable person in the case of a community treatment order, and we'd like to point out that that is fairly contrary to the tenor of the rest of the legislation. Rights advice, to my recollection, has been set up as a means of providing information to an individual who's incapable in those eight rights advice situations I described earlier.

The right to legal counsel: This is the proposed section 33.1(5): It's probably not a bad idea in many ways. If we take the case of the Court of Appeal one step further and we say that the substitute must have information about duties and obligations and we've codified that they must have the right to legal counsel, I think it will have implications for legal aid.

It may be the case that you'll be hearing from the Ontario legal aid plan, or whatever its new name is, about the impact this will have. CTOs, in and of themselves, will likely place a greater burden, especially now that you have a system where the clock starts ticking right away. People will be likely to challenge their situations much earlier. We're not saying that substitutes should not have that access to legal aid; I think it's just a note of caution, to the extent that the burden on legal aid will be there.

It may translate into more people going to the board, and a greater burden on the Consent and Capacity Board. Presumably they've had the heads-up; they know that will occur. Perhaps steps are being taken to ensure they're properly resourced. Our concern is that for our clients, who occasionally have some difficulty accessing legal aid even with the assistance of the rights adviser, where board hearings may not happen quite as quickly as they should, the burdens will be increased.

I think I've already covered the amendment to the Health Care Consent Act. We've set out quite a bit of detail about how the act works, just for reference. The main item of course was the expansion to allow a physician to ask the board to have the substitute depart from the prior capable wish.

I think it is a fundamental issue. It may survive some charter challenges, and it has been before the courts. We'll see where that goes. It sends a message when you can say to the public, not only in terms of treatment which is what we've concentrated on, but also with respect to admission to a care facility, personal assistant services, and the like—the fact is, people like to think they can make an advance directive, a living will. We encourage that. In this case, I think it would be quite a surprise to many people in the province to know that, "Fine, you can go ahead and do it, but in fact after you're incapable there are a few parties who can step in and overturn what you wanted to have happen."

#### 1700

I leave it at that. I'm not sure whether Barbara has anything to add, but I would like to leave some time for questions as well.



**The Chair:** We've got about four minutes actually. Normally when it gets that tight we give it all to one caucus but I don't want to necessarily. The rotation this time would have the government start. I'll ask Mr Clark whether he wants all that time or whether he wants to share it.

**Mr Clark:** I'll defer to my colleague.

**The Chair:** Ms Munro?

**Mrs Julia Munro (York North):** I guess it's four minutes. Is that OK?

**Mrs Marie Bountrogianni (Hamilton Mountain):** I'll defer.

**The Chair:** Frances has a burning question.

**Mrs Munro:** Oh, she's got a burning question?

**The Chair:** We'll split it between the two of you.

**Mrs Munro:** Then I won't defer my question. We're getting fewer opportunities here.

A quick question, because I know you've covered a great deal of territory and I'm sure you were here for the conversation that took place a few moments ago with regard to the opportunity that we as a committee will have to be briefed on some of these issues. I just wonder, since much of your presentation and concern deals with the CTOs, and part of the whole reason behind this was to avoid unnecessary hospitalization, to be able to provide flexibility for treatment, can you give us one or two ideas that you feel would provide that additional flexibility for patients?

**Ms Barbara Cadotte:** I'd just like to make a couple of comments about that. As we mentioned earlier in our submission, we recognize that the government of Ontario has spent a great deal of money in terms of developing community resources, particularly assertive community treatment teams, which are still in the process of being implemented across the province. We feel that this is a very interesting approach to providing intensive support and assistance to people with serious mental illness in the community, and we think that we're so early in the implementation process that we should have the full deployment of teams up and running and working with their full complement of recipients, and have that evaluated prior to moving forward to more coercive measures.

**The Chair:** Thank you. Unless somebody can pose their question in a minute, we've used the time.

**Ms Lankin:** It's physically impossible for me.

**The Chair:** I didn't want to say that, Ms Lankin.

Thank you very much for your very detailed presentation. We appreciate your taking the time to come before the committee today.

#### CENTRE FOR ADDICTION AND MENTAL HEALTH

**The Chair:** That takes us to our fourth presentation this afternoon, the Centre for Addiction and Mental Health. We invite the two doctors from the centre to come forward.

Good afternoon and welcome to the committee. You have 20 minutes for your presentation, to be divided as

you see fit between either your oral dissertation or question and answer.

**Dr Paul Garfinkel:** I'm Paul Garfinkel, I'm the president-CEO of the Centre for Addiction and Mental Health. This is David Goldbloom, physician-in-chief.

I'm going to make a few introductory comments and then I'll turn it over to David, who knows what he's talking about. I'm going to focus in on the CTO aspect of this. I think you've heard already that there is considerable disagreement in the field with regard to the introduction of these, and our centre has gone through a process that reflected this disagreement. It was very hard to come to a consensus on this issue, but there are a number of issues in which a consensus can be readily achieved.

First of all, the urgency of creating a full continuum of accessible, high-quality care for people with mental illness and substance abuse is imperative.

Secondly, we would see within that continuum a very limited role that CTOs may possibly play with a small number of people, but that the CTOs must be seen as a last resort for a minority of cases and invoked only on a clinical basis.

We also see a need for safeguards, and we find it regrettable that so much of the discussion about CTOs has focused on the issue of violence. The chronic, seriously mentally ill account for 3% of the population of Ontario and probably account for about 4% of the violence. So this will not be a solution to the problem of violence in our society.

Having made those introductory remarks, I'll turn it over to David, who will comment more about the Mental Health Act and about CTOs themselves.

**Dr David Goldbloom:** Thank you. I'm speaking to you not only in my capacity as physician-in-chief at the Centre for Addiction and Mental Health, but also as a clinician who regularly and on a daily basis deals with issues related to the Mental Health Act in its current form and participates in review board hearings when patients exercise their legal and necessary right to challenge those findings. I have some front-line experience with both the existing legislation and some familiarity with what is in the current proposed changes.

First of all, I welcome efforts to update the Mental Health Act and to make it relevant to the needs of people with mental illness, to the needs of their families, and as well, to make it a more user-friendly document than it currently is for physicians who are vested with the authority by the government to exercise what are extraordinary powers around freedom of movement, around freedom of choice. These are responsibilities that I believe all physicians should treat with the dignity and due thoughtfulness that they require.

There has been a great deal of confusion under our existing Mental Health Act. The form 1 of the Mental Health Act, which is for many people the triggering point—the initiating point of contact with the mental health system—is a terrible document. It's an incomprehensible document that is designed to be completed



incorrectly. A number of us participated with the mental health law education project to translate it into English from its current form, and I regret that the government, despite repeated requests, has not yet seen fit to make the form 1 a document that families can understand, that physicians can understand and that patients can understand, because I think some of the authority that already exists within form 1 and related sections of the legislation is underutilized because of the miscomprehension.

I think the removal of the word "imminent" in the proposals will go part of the way to clearing up some of the confusion, but I would urge that consideration be given to creating more plain-language documents, not only for the legislation itself but for the forms that are flowing from the Mental Health Act, to assist in their appropriate and optimal use.

With regard to the proposed changes, one of the things that I've been aware of is the proposal to include both mental and physical deterioration rather than the current criteria of physical impairment of the person. This accords the appropriate respect to the preservation of the mind as well as the preservation of the body. However, I would love to see some more operational discussion around how mental deterioration will be operationalized. In general, and I say this from my experience of frequently participating at review board hearings, the issue of physical impairment of the person is fairly commonly understood in relation to someone who has stopped eating, stopped drinking and stopped sleeping, for instance, as some of the typical scenarios which may precipitate certification under that criterion.

There should be important thought given to how mental deterioration will be operationalized, and I haven't seen information accompanying this legislation that gives me comfort in that area. I do know that mental deterioration is a criterion in some of the other Canadian provinces.

I think perhaps, though, the largest change that is proposed really relates to the community treatment orders. Paul has alluded to the process that we went through at the centre in trying to evolve an understanding of CTOs. This was not a process that we took lightly. It started as a discussion almost a year ago at our medical advisory committee. After extended discussion, the medical advisory committee presented a position to the board of trustees at the centre. The board, in its wisdom, convened a task force that included people from the community, people with illness, people with family members, policy-makers, physicians and others at the centre to try to achieve some common ground.

1710

It is, indeed, reflective of the debate which exists at large in the community around CTOs that we could not achieve a consensus on whether CTOs should be implemented. What we did achieve consensus on was the kind of constraints and requirements that should be in place if CTOs were to be introduced in order to provide safeguards around their use. We've already seen lots of evidence of, I believe, misapprehension and miscompre-

hension regarding CTOs, some of which is offset by these proposed pieces of legislation.

The fear that people unknown to a system of mental health care, who simply appear to be acting strangely on a street corner, will be swept up and involved in a CTO is not consistent with the legislation that is proposed here. From my reading—and I'm not a lawyer—this legislation closely resembles the Saskatchewan legislation, but there are some notable differences. I would hope that we would do a couple of things in contrast to what has happened in Saskatchewan where the legislation has been in place and in use now for five years.

First, there have been very little significant outcome data brought forward by the Ministry of Health in Saskatchewan. A significant opportunity has been missed to understand, both from a quantitative and a qualitative point of view, the impact of CTOs on patients, on families, on health care providers. In the latter area, there has been some research published by Dr O'Reilly and colleagues from the University of Western Ontario about use and experience with CTOs, but to my knowledge, nothing that really documents in a meaningful way the experience of people who have been placed on CTOs and the experience of their families. In that regard, I would not like to see the Saskatchewan experience repeated. We need to develop a comprehensive understanding of the experience from everyone's perspective.

Second, the criteria for getting on to a CTO in Ontario, as proposed, would be somewhat different from those in Saskatchewan. Differences pertain to the number of hospitalizations and the duration of time for which those hospitalizations would occur. If you were to simply stack them up in a quantitative way, you need fewer hospitalizations in a shorter period of time and for a shorter duration under these proposed guidelines than is the case in Saskatchewan.

I would be interested to know what would have led the legislation to move in that direction away from the Saskatchewan experience. Similarly, the duration of a CTO that is proposed is double the duration that exists in the province of Saskatchewan, from three to six months. I know that the experience of psychiatrists in Saskatchewan, as documented by Dr O'Reilly, is that they felt the duration was too short. Perhaps that's what has influenced this change. But it would have been helpful for me, as somebody reading this legislation and comparing it to legislation in other provinces, to understand the rationale for the differences.

One of the things that struck me in a positive way regarding this proposed legislation relates to the fear that some people would have that failure to comply with, for instance, a single appointment or missing a single injection, would automatically trigger a return to hospital. It's clear from this legislation that a series of steps would occur before that power would be invoked.

Similarly, the presence of both the option for an appeal when a CTO is initially in place, and a mandatory appeal upon every second renewal of the CTO, is consistent with our current legislation on requirements



for people who are hospitalized involuntarily under the Mental Health Act. I welcome those safeguards as well.

We had advocated that this legislation be subject to a sunset clause and that mandatory research into the effectiveness and the effect of this legislation be included in the package so that we ensure that it is doing exactly what it is intended to do and that, in weighing its renewal after a sunset period, we incorporate the view of all people concerned.

The fact that it, if you will, constricts the community to provide service is a positive thing. However, there are concerns about the availability of such service and also concerns that people would view this as a simple solution to a complex problem. We view the needs of people with mental illness as being far more broad than this legislation would entail.

The kinds of supports that are needed for the vast majority of people with mental illness should not be overlooked in the context of a focus on a piece of legislation which, by our estimates and by the Saskatchewan experience, might apply to 1% of the 1%, in other words, 1% of the population that suffers from schizophrenia and related illnesses, and our best estimates are that 1% of that population would themselves be candidates for community treatment orders.

I'll conclude my remarks there. I'm sure we'd both be happy to take any questions in the remaining time.

**The Chair:** Thank you very much. We have six minutes remaining for questions. Because the government caucus had the only question last time, I think what I might do is split it so that there's a reasonable amount of time for the Liberals and the NDP this time.

**Mrs Bountrogianni:** Wouldn't it be difficult to evaluate the efficacy of CTOs, except if you do it over a long period of time, given the narrow scope that you're also recommending or that is recommended in this document? Just from my knowledge of research design, wouldn't it have to be a very long sunset clause? I find it difficult to see how this could be evaluated.

**Dr. Goldbloom:** We talk about a sunset clause of five years as being that time frame in which you would gather enough information. That being said, one of the advantages of a qualitative research approach is it allows for in-depth understanding of the experience of a smaller number of people. There is a randomized controlled trial that was published in December 1999 by Dr Marvin Swartz and his colleagues at Duke University where people were indeed randomized to either a CTO with intensive case management or no CTO with intensive case management. They were able to produce some data from that.

You're correct. It takes a large sample size. I want to be clear about this: Nobody is advocating broad CTO criteria in order to increase sample size for research design, all right? We view this as the last option to be pursued, not the first option. It would be my fervent hope that as few people as possible would be in a situation where they would need or benefit from a CTO.

**Dr Garfinkel:** I would just add that you're correct in saying it would be very hard to get a perfect design, but I

wouldn't use that as an excuse not to evaluate effectiveness. It's imperative it be evaluated.

**Mrs Bountrogianni:** Good point. I just wanted to make sure that people understood we're not talking about six months here.

My other comment is, a previous group talked about how removing the word "imminent" and also having a previous CTO as the two criteria for a CTO being implemented decreases the rights of the potential patient. You have here as one of your recommendations that the patient has been the subject of a CTO formerly. Are you not worried that perhaps that would decrease their rights under the charter?

1720

**Dr Goldbloom:** Under the current Mental Health Act, for instance, the only way you can be placed on a form 4 is if you're already under a form 3. However, if you're placed on a form 4, you have the right, which many people exercise, of a whole new appeal with a whole new review board that's not prejudiced by an outcome of a hearing, for instance, on a form 3 where the form 3 may have been upheld. My expectation would be that the exact, same process would apply to somebody who's placed on a CTO and, prior to the expiry of that CTO, a second CTO is issued. The same right of appeal would exist and presumably to a different review board than the one that might have heard an appeal of a first CTO. We want to be sure those kinds of democratic safeguards are in place.

**Ms Lankin:** I actually have two questions, but just a quick comment on that. I think that is a good part of the protection in the legislation, although the current wording requires that on every second renewal it's deemed that the person has applied. But for the physician issuing the renewal, there's only a requirement for them on the first renewal to notify the Consent and Capacity Board. I think there's a technical problem that we'll have to—

**Dr Goldbloom:** With the issuing of any CTO, regardless of whether it's a first, second, third or fourth, there must be mandatory rights advice, and that rights advice process has to be enshrined very clearly in the legislation. The advantage of the mandatory review of a CTO is the exact same as the advantage of the mandatory review of the form 4, which is that even in the absence of the person choosing to contest the form, the contesting of the form or the review of the form is automatic. I think that's in the interests of everybody.

**Ms Lankin:** I'm going to set out both of my questions so that I can get them in, otherwise it may not happen.

**The Chair:** The longer the questions, the shorter the answers.

**Ms Lankin:** The first one is with respect to some discussion we had on Friday and again today—on Friday with the OPA—and it relates to the findings of the Swartz study that you referred to and the fact that the only significant difference between the two control groups was for a subpopulation and particularly those with a psychotic disorder. It's very specific. You alluded to the small population that could be affected by this.



We've had some discussion about attempting to clinically narrow the application of this. There seemed to be support from the OPA on that. I'd appreciate your comments.

The second question is a bit more complicated. The issuing of a CTO, the thing that's got me concerned about how this happens—this is a process issue. A general practitioner out in the community who feels that the individual has met a number of criteria can issue a CTO. One of them must be that the person, in the opinion of the physician, meets the form 1 criteria to be sent for an assessment, but there's nothing that compels an assessment to take place or for a determination, form 3, that the person actually should be committed, is eligible for involuntary committal. In order for this to actually be less restrictive—and I'm sure there are occasions where people are sent for an assessment, you assess and you determine that they shouldn't be involuntarily committed.

**Dr Goldbloom:** Absolutely.

**Ms Lankin:** I think there's a problem in the juxtaposition of how this happens. I feel very concerned that in communities where I understand there's a shortage of psychiatrists, someone may not have the benefit of that kind of assessment and/or a second medical opinion about the validity of the use and effectiveness of a CTO and/or even being able to contest the elements of it—what kind of medication works for me as a person. Do you have any thoughts about that?

**Dr Goldbloom:** The points you've raised actually are excellent. It would be my own view, just speaking extemporaneously on this, that given the significance and severity of a CTO and its implications, it should not be simply any physician; it should require expert psychiatric assessment. The form 1 is an emergency document that pertains to immediate risk and allows for optimal intervention and assessment in a 72-hour time frame, which is very different than what's proposed for a six-month CTO. I think any determination that somebody is a candidate for a CTO should include expert psychiatric assessment, given its implications.

**Ms Lankin:** And on the clinical narrowing?

**Dr Goldbloom:** The clinical narrowing is a challenging issue. You're right that Swartz and his colleagues showed that for people with mood disorders per se, CTOs made no difference, but for people with psychotic disorders, CTOs did make a difference. The problem becomes that a number of people who suffer from mood disorders may experience some chronic psychotic symptoms, and of course these are group means, and group means for the population with mood disorders versus the population with psychotic disorders obscure individual differences. I would be a little reluctant to imagine how you're going to enshrine in legislation diagnostic categories versus the severity of symptoms and sequelae from illness.

**Dr Garfinkel:** I would go a bit stronger than that and say that with our current state of knowledge, it would be very unwise to do it by diagnostic review. There's too much overlap and there are other predictors that are far better.

**The Chair:** Thank you, gentlemen. We appreciate your coming before us here this afternoon and bringing your perspective.

#### MENTAL HEALTH LEGAL COMMITTEE

**The Chair:** That takes us to our last presentation of this afternoon's session, the Mental Health Legal Committee. Just a reminder to members of the committee that this was the group we had to reschedule because we went over time on our last Toronto hearing date. We appreciate their indulgence and we've agreed to be, shall we say, flexible in the time. It was scheduled for 20 minutes, but seeing that we don't have another group, we'll extend that to 30 minutes.

**Ms Lankin:** If I could just correct the record, it was actually to be 30 minutes because one of the—

**The Chair:** Was it originally? OK. Then we'll make it 32 minutes on the clock here.

**Ms Anita Szigeti:** Good afternoon, members of the committee, and thank you for the opportunity to address you today. My name is Anita Szigeti, and I am chair of the Mental Health Legal Committee.

The committee is an organization of lawyers and community legal workers who advocate to protect and advance the legal rights of persons with serious mental health problems. I am also a lawyer in private practice, representing this clientele at hearings of the various administrative tribunals which adjudicate in respect of such charter-protected liberty interests as for instance the presumption of capacity under the law and the right to refuse treatment, which we all currently enjoy. These basic civil rights protections, including the right to life, liberty and security of the person, as well as the right to autonomy, privacy and self-determination, in our submission, are threatened and severely restricted by provisions of Bill 68 to an extent which is unjustified and unjustifiable. Our 75 members across the province therefore oppose the passage into law of Bill 68.

We noted that Minister Witmer introduced Bill 68, suggesting that the government was, and I quote, "lighting the way for the new century with this landmark legislation." Our members are mindful of Justice Quinn's remarks in a recent mental health case in his courtroom when he said, and I quote again, "History has shown that the road to injustice is frequently lit with the light of good intentions." The Mental Health Legal Committee considers that Bill 68, no doubt with the best of intentions, lights the short and bumpy road to serious injustice for persons with mental health problems.

We have submitted to you some written comments last week, and I must apologize for the length of the material. It is exactly as long as it is because of the extremely short notice I had to prepare it. When you look at the document, you will see there are all kinds of different fonts and sizes of letters, and I ask you to pay no attention to that whatsoever. My computer had a mind of its own.

In my oral submissions today, I propose to answer for you three questions about this legislation, and at the end



of my presentation I will be pleased to respond to any questions you may have. However, I also have three questions for this government which our members were simply unable to answer on their own. The three questions that I will address are the following: (1) Is new mental health legislation necessary? (2) Are the amendments proposed in Bill 68 consistent with the Canadian Charter of Rights and Freedoms? (3) Are there effective measures the government could take instead of introducing a course of legislation? The short answers to these questions, in our submission, are no, no and yes, and here is why.

1730

First, is new mental health legislation necessary? We think not. There are three reasons supporting our perspective: (1) The existing legislation sufficiently protects the community as well as the seriously mentally ill; (2) the real problems are gross misunderstanding by professionals and families of their rights and obligations under the existing mental health laws; (3) this confusion is compounded by the inadequate funding of in-patient and community resources for this population.

Dealing first with the existing legislation: It is our submission that the carefully crafted existing mental health legislative scheme already balances the right of the individual to autonomy and privacy, as against the right of the state to intervene to protect the safety of the community, or that of the right of the individual to be kept safe from imminent, serious physical impairment. This is done, as you know, by provisions of the Mental Health Act for involuntary psychiatric admissions, the provisions that are now sought to be broadened.

The other two important pieces of companion legislation, the Health Care Consent Act and the Substitute Decisions Act, already contain provisions enabling any incapable individual to receive treatment pursuant to the informed decision-making of a substitute decision-maker, as well as to plan for a period of incapacity by drafting a power of attorney for personal care or a document known informally as a Ulysses contract, essentially waiving the person's right to otherwise available legal remedies.

The Substitute Decisions Act also permits court-appointed guardianships of the person, whether initiated by a family member or the office of the public guardian and trustee on an emergency basis wherever a person is not capable of personal care and adverse effects might be suffered as a result of that incapacity while the person resides in the community.

Additionally and importantly, the Mental Health Act already allows for leaves of absence without any condition at all attached to that leave for up to three months. That's in section 27 of the existing Mental Health Act.

The second reason why we believe that revisions to these laws are not necessary is that any perceived shortcomings of the act can be adequately addressed by the appropriate education, which we suggest should be mandatory, on the operation of the three acts and the ways in which they are meant to and do function in harmony.

The principal objection to the existing legislation is that it is too difficult to get folks with mental health problems into psychiatric hospitals and treated against their will. With the greatest of respect, under the Constitution it's meant to be difficult to strip people of basic civil rights. In fact, any limitation on these liberties must be reasonably justified in a free and democratic society.

However, the perception that it is just too hard under the law to either involuntarily hospitalize or treat an incapable person against her will is itself deeply flawed. As a matter of fact, it is impossibly easy to get someone into a psychiatric facility. Family members, or anyone else, for that matter, can simply attend before a justice of the peace, for example, and provide information without requiring that the individual sought to be committed be present, and the justice of the peace will issue an order for the apprehension of the person to be taken to the psychiatric facility for an evaluation. There are many other ways under the present acts to get a person from the community to a psychiatric facility.

The third reason why the law is not at fault in any perceived shortcomings of the system is that, in our submission, the real problem starts when the person arrives at the psychiatric facility. The problem is one of underfunded in-patient beds and a general lack of community resources for persons with serious mental health problems. It has been our members' experience that our clients can no longer get admitted to hospital voluntarily. The de facto criteria for a voluntary admission have become the legislated criteria for an involuntary admission. It is because hospitals do not have the beds that doctors inappropriately, sometimes, fail to detain involuntarily those persons who under the law meet the existing legislation.

Not only will this problem not be alleviated by Bill 68, it is going to be seriously exacerbated, to the point where pressures on in-patient beds will mean that only those who have just attempted suicide or have physically seriously assaulted another person will actually get admitted to a psychiatric facility.

If you need to see statistics on this, you will recall that a journalist by the name of Scott Simmie, who was the Atkinson fellow in 1998, published his *Out of Mind* series in the *Toronto Star*. He quoted statistics from the Centre for Addiction and Mental Health Queen Street site that, while in 1992 out of a total of 1,950 patients admitted to the Queen Street site 840 had been admitted voluntarily, by 1998 only 138 patients out of a total of 670 were admitted on a voluntary basis. That's a drop from a 43% to a 20% voluntary admissions and a total cut of 1,280 beds at that site alone. No doubt, statistics for the year 2000 will show even fewer beds and a smaller percentage of voluntary admissions—in our experience, very close to zero.

Summing this point up, the existing legislation already strikes the appropriate balance, and the problems really are misinformation and underfunding.

The second question I will now propose to answer is, are the amendments proposed in Bill 68 consistent with



the Charter of Rights and Freedoms? Again, in our submission, the short answer is no. Bill 68 does four things which offend the charter on three basic grounds:

- (1) It removes the word "imminent" from the existing criteria for an involuntary admission.
- (2) It expands the criteria for involuntary committal to include the potential for mental deterioration.
- (3) It introduces the community treatment order.
- (4) It proposes that police officers have the right to detain anyone, based on the uncorroborated information of one person alone, without the requirement that currently exists to observe disorderly conduct in the individual sought to be delivered to a psychiatric facility for evaluation.

In our submission, all of these proposed amendments are arguably offensive to the Charter-protected rights to life, liberty and security of the person contained in section 7, offensive to the right protecting against arbitrary detention contained in section 9, and the right to equal treatment under the law in section 15.

With regard to imminence, I think it bears repeating, as I understand, that there is confusion among medical professionals and families about just what "imminence" means. I also understand that this confusion is said to be a roadblock to physicians' ability to involuntarily detain persons with mental health problems. Just to be clear, the requirement of imminence attaches to the third ground for an involuntary admission, serious physical impairment of the person, because physical impairment is a lower risk of harm than serious bodily harm to the person, which risk is not similarly qualified under the existing section 15 or clause 20(1) as a ground for involuntary assessment or admission.

The time-limited requirement exists as a basic liberty protection against detention on the basis that you might come to physical impairment at some remote time. The remedy for confusion on just what is meant by "imminence" is clearly education and not the removal of the very requirement that is intended to protect civil rights. For instance, and just to give you another example out of context, while police officers' ability to obtain confessions from people charged with crimes is likely impeded by the requirement that they caution the person detained of their right to silence, we do not propose to do away with the Charter protection in order to facilitate the work of the officers in getting evidence to assist in obtaining a conviction.

On the issue of widening the committal criteria, the provisions of Bill 68, in extending involuntary psychiatric assessment and hospitalization to those persons who in the past received treatment for a mental disorder thought to clinically helpful whenever they risk substantial mental deterioration, cast the net so wide that essentially anyone with a prior diagnosis of a mental disorder becomes certifiable under this legislation. No doubt, the intention is to restrict this additionally broadened committal criterion to those persons who are often said to be chronically ill. However, the language of the bill simply accomplishes nothing of the sort.

In reality, persons once previously diagnosed with, for instance, seasonal affective disorder or post-traumatic stress disorder can, under the proposed legislation, be involuntarily admitted to a psychiatric facility based essentially on the pre-existing diagnosis alone. It is this proposed amendment to the criteria for involuntary psychiatric hospitalization that is going to cause my clients to change their names legally, leave this province or, I take it, go to Peterborough or Windsor, where I understand psychiatrists are lacking, and go as far underground as possible to avoid the very real potential for a complete loss of their liberty in situations where they would currently be living in the community.

The suggestion that Bill 68 somehow enables a population of seriously mentally ill persons to live in the community is simply misleading. It does the opposite. It mandates the involuntary psychiatric admission of potentially thousands of individuals who currently enjoy their liberty. Indeed, this is the stated purpose of the bill: to get at those individuals currently seen to be beyond the reach of the law.

In respect of the community treatment order, we suggest that in conjunction with the proposed widening of the criteria for involuntary admission, the introduction of the community treatment order regime is perhaps most troubling. Again, the suggestion that this mechanism is benevolent in providing the least restrictive alternative for persons with mental health problems to reside in the community rather than in psychiatric institutions, is entirely unfounded.

#### 1740

What Bill 68 does is expose a person to a compulsory medication regime when those very people do not meet the existing criteria under the current legislation for involuntary admission to hospital. If you ask these people, "Aren't you lucky that the CTO lets you live in the community?" they could truthfully respond: "But I don't understand. Prior to the CTO, I was living in the community and I wasn't coerced to take medication." So I'm afraid there is no silver lining here for the mentally ill whatsoever. Essentially it is all bad.

Every aspect of this bill is set up in a way as to coerce and unconstitutionally compel treatment or hospitalization on a group of people who currently live among us peacefully, which is why I expect you will see a serious movement by this population to distance itself physically, emotionally, utilizing whatever measures they can to get away from the mental health professionals with whom they may at this time have a reasonably good relationship. This will include psychiatrists in hospitals, in the community, as well as members of the very expensive assertive community treatment teams the province has recently put into place.

The criteria for a community treatment order proposed in Bill 68, that is, two prior hospitalizations or accumulative hospitalization of 30 days, are entirely arbitrary and, once again, cast the net too wide to be defensible.

I was indeed intrigued to hear submissions by the Ontario Medical Association's psychiatric division, I think Wednesday last, in this very room, where the



suggestion was made that it was somehow unfair that the community treatment order would not be made available—that's their term—to those persons who have never been previously hospitalized. I say to you, very much tongue-in-cheek, that there's a part of me that wishes you would adopt that submission. The reason for that is primarily that if a CTO could apply to just anyone at all thought to be suffering from a mental disorder, that legislation would not last even a day in this province.

If the stated purpose of this bill is to target the so-called revolving-door patient, it is interesting indeed that the OMA wishes to see the CTO applied to persons with no former psychiatric hospitalizations at all.

The other stated purpose of this bill is the protection of public safety, and Minister Witmer referred to this legislation as making our communities safer. I will point out to you, just for fun, that there's absolutely nothing in the sections widening criteria for involuntary admissions, or equally in the criteria for the CTOs, that link the application of the coercive measures to any prediction of or propensity for dangerousness in the case of the subject of the detention or compulsion, any more so than our existing Mental Health Act already does.

Finally, to suggest that the CTO is not a coercive measure at all, but rather an agreement struck between the physician and the individual or his or her substitute decision-maker, is again misleading. We believe you cannot suggest that consent obtained under pain of an involuntary hospitalization is a voluntary consent. It is clearly a consent obtained under duress.

In the case of SDMs, or substitute decision-makers consenting to the CTO on behalf of an incapable person, we think this is such an extraordinary level of control vested in the family member that only court-appointed guardianships should grant similar power.

By introducing Bill 68, the result of the proposed amendments is that family members will obtain complete control over the person who has a mental health problem, without any of the due process automatically attaching to applications for court-appointed guardianship, and without the liability that attaches to exercising those duties of guardians without regard for the incapable person's best interests.

I want to leave some time for questions. I'm not going to spend a lot of time on this, but I will say that I found it illuminating to listen to submissions of the Schizophrenia Society of Ontario, immediately followed thereafter by those of the OMA, organizations both of which spent a substantial part of their presentation to you requesting amendments to insulate both family members and physicians from exposure to liability arising from their actions in enforcing the CTO.

In our submission, what is being proposed by Bill 68 and requested by families and physicians is ultimate control over the day-to-day life of individuals without the legal responsibility that currently attaches to that level of authority over the lives of these people.

Lastly, on the issue of police powers, I will simply say that there is good reason for requiring police officers to

personally observe disorderly conduct under the existing law. The removal of that requirement will inevitably lead to abuse.

At this time, I think I'll take a minute just to comment on the Antidormi inquest that Dr David Eden of Niagara region spoke to you about. I have nothing but the greatest respect for Dr Eden, and just so you know, I was intimately involved with litigating the Antidormi inquest. I had the pleasure and the honour of appearing at that inquest on behalf of the Canadian Mental Health Association's Ontario division.

I need you to know for the sake of accuracy and clarity that in the facts of that case, which were admittedly tragic, there were probably six or seven ways to get Mrs Piovesan, the woman who stabbed Zachary Antidormi, into hospital. On one occasion, at the end of 1994 or early in 1995, a police officer acting under her own existing section 17 authority, actually did bring Mrs Piovesan into hospital. Unfortunately her psychiatrist, and this was put into evidence at the inquest, discharged Mrs Piovesan, even though she had had no response whatsoever to treatment, with a caution that if Mrs Piovesan continued to mention her homicidal intent in the community she would land back in hospital.

Not any of the professionals understood their obligations and rights under the law—not anyone who testified at that inquest. There were police officers who testified that they made no attempt to see Mrs Piovesan, in which case it was obviously going to be hard for them to observe her conduct. The evidence at that inquest was that Mrs Piovesan is still at this time reportedly non-responsive to treatment, so in my submission she is actually the anti-CTO poster woman. She is someone who, if she were subjected to a CTO, would have been allowed to live in the community next door to Zachary Antidormi, provided she took her medication, but would have been an equally lethal threat to Zachary, which is why our existing legislation divides issues of public safety and detention separate from issues of capacity and treatment.

In summary, our committee opposes the passage of Bill 68 into law because of our belief that the existing legislation, when properly understood and combined with proper funding, addresses any concern that any member of the community has.

This is extremely coercive legislation which in our view is entirely unnecessary in light of the fact that education of professionals and families, together with the funding, would alter the perceptions that there is a lack within the legislation.

I'm happy to respond to any questions, but I will just say to you that there are three questions our committee was unable to answer on our own. I've given you the three questions that I could answer.

We have three questions. We require some clarification on some things we can't understand:

(1) What happened to the mental health law education project we've heard so much about, the one pioneered by Michael Bay? We thought it was a good idea that would



go a long way toward alleviating difficulties. I guess what we're confused about is, is there a report of the effectiveness of that education project? Was it successful in some way or did it, as Dr Young points out, not succeed as we had expected it might?

(2) If the government is prepared to put the resources behind community funding of services, why not try that first before introducing legislation that would be coercive? Why not do things with and for people before we start doing things to them?

(3) Lastly, we don't understand why this government would want to contribute to the stigmatization of the seriously mentally ill by framing this bill as the solution to perceived dangerousness of the mentally ill in the community. Why make the announcement that this bill is the answer to safer communities? We're concerned that that type of framing of the issues actually contributes and compounds the existing stigmatization of the seriously mentally ill.

That's it. I'm done.

**The Chair:** That leaves us about seven minutes for questions. I should alert everyone that we're probably going to have to stick very close to that because there's a bell about to ring for a vote in the House. For the rotation this time, we'll start with Ms Lankin.

**Ms Lankin:** There are a number of things I would like to address, but let me ask you about your comments on form 4 admissions. A couple of heads of psychiatric departments of general hospitals have said to me, although they won't say it publicly, that there are people who come in for assessments, sent in on form 1 or form 2 for assessments, who are not admitted—granted, some people because they don't meet the criteria in the view—sorry, are we OK to continue?

**The Chair:** Yes. It's a 10-minute bell, so we'll go until about two minutes to.

1750

**Ms Lankin:** I lost my train of thought there. There are many times when people are not admitted because they have no beds. Some of the frustrations that family members and individuals themselves have experienced in trying to get access to treatment is around this.

I have been told by a number of these people that with the broadening of criteria for involuntary commitment, they fear a whole group of new people ending up in their emergency rooms, and the inability, with the current resources—particularly with the Health Services Restructuring Commission's restructuring numbers being based prior to these legislative changes.

The OMA said to me: "Oh, no, CTOs are going to put all these people out on the street. We're going to have lots of beds." So essentially we'll have an embarrassment of riches. I went back to the other psychiatrists and they disagree with that profoundly. On the one hand, with people who want to make the legislation work, we're all trying to find the right adjustments here, but I feel we have to acknowledge that it's not only the community side, that there's a facility side shortage. I wonder if you can comment on that.

Just quickly, the last question: I have heard it said that the previous hospitalization criteria for CTOs, which includes the two or cumulative 30 days, are going to lead lawyers to advise their patients never to go in voluntarily, because two previous or a 30-day voluntary admission at some point in time could set you up in the criteria for this. I wonder if you could comment on those two things.

**Ms Szigeti:** If you look at the language of the existing legislation as well as the proposed amendments, physicians have a positive obligation—I'm not entirely sure they comprehend this, but the language of the legislation is, "When an individual meets the criteria for an involuntary admission, the physician shall complete a form 3,"—or whatever it is—"admitting the person involuntarily." So it's actually not discretionary that way. The person either meets the criteria for involuntary admission or doesn't. When you expand the committal criteria in the way the bill proposes, you're going to have a lot of physicians not being able, frankly, to do their duty pursuant to the legislation.

I don't think community treatment orders are going to be the answer in every case. I think there will be pressures on beds and it's going to leave physicians in a real quandary. I'm pleased to hear that at least some physicians are concerned about that. I understand that some physicians take a different view. Maybe it depends on their hospital and the funding the individual hospital has.

Your second question?

**Ms Lankin:** Voluntary admissions.

**Ms Szigeti:** I've represented more than 300, probably about 350, individual patients in various psychiatric facilities in the last three years. The advice I'm going to give them now is to do whatever they can to stay out of hospital. If they do land in hospital, whereas hearings of the Consent and Capacity Board which adjudicate in respect of these issues now convene within seven days, and I'm usually flexible to the board's schedule, I'm now going to be writing letters to the board saying, "We need you to hold that hearing today because if you revoke the certificate that holds my client seven days from now, that's seven more days that goes on their record of this possible cumulative 30 and you've prejudiced them by making them a candidate for a CTO in the future."

There are going to be huge administrative pressures on the function of the Consent and Capacity Board and we will be contributing, through no fault of our own, to that pressure because that is the best legal effort we can make on behalf of this clientele. Thank you for asking those questions.

**The Chair:** I think in the interests of time, Mr Patten, if you have a very quick question, say three minutes.

**Mr Patten:** My question is, you said you felt there was no need to change the law at this point because everything seemed to work with the existing law. I would like to ask you if you would respond to Dr Goldbloom, who was here this afternoon. Perhaps you heard him. In a study he did, he says, "While a need for community treatment orders may be compelling, one could argue that



they are unnecessary if current available mechanisms exist to meet the need," which I think was your point.

**Ms Szigeti:** Yes.

**Mr Patten:** He says: "This is not, however, the case. Section 27 of the Mental Health Act, which allows involuntary patients to be out of the hospital for up to three months, was not intended to provide community-based treatment and is predicated on the assumption that the patient will in fact return to the hospital. A recent review board hearing at the centre did not uphold the use of section 27 for community-based treatment of a certified patient. It is clear that section 27 was not designed to be used as a mechanism to enforce community-based treatment and should not therefore be held up as a practical alternative." That's a quote, by the way.

**Ms Szigeti:** That's Dr Goldbloom's position, and I appreciate where he's coming from. The language of section 27, in fairness, does suggest that the intention must be that the individual return to the psychiatric facility at some time within the subsequent three months. It all depends, Mr Patten, on what the intention of the CTO regime is. Many of the press releases emanating from the government talk about how this will provide for a graduated release from psychiatric hospitalization—this business of, "The psychiatric facility doors will swing open and people will be enabled to live in the community." That is something section 27 probably can be used for. It's just a shorter term. It's the length of a certificate. It's a three-month period. The intention is to return to the facility. But if the idea is to see how the person does on a trial run in the community, it could certainly function as that.

Dr Goldbloom is probably right that it's not intended to be a long-term course of treatment in the community, but it's our submission that if medication is actually helpful to an individual, presumably at some point they will regain the capacity lost during the times of the illness. You shouldn't need to keep someone on a CTO for the rest of their life. Three months either improves them to the point where they can make their own decisions or it doesn't. Those are my comments about that.

**The Chair:** Thank you very much. We're under the gun again. Things are happening in the assembly, but you got your half-hour. We appreciate your taking the time to make your presentation.

With that, the committee stands recessed until 7 o'clock.

*The committee recessed from 1756 to 1903.*

**The Chair:** Good evening. I call the committee back to order for the purpose of further presentations on Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996. We are joined by a number of presenters. The first up is Mr Michael Armstrong. Please come forward and take any of those chairs.

**Ms Lankin:** Just while we're waiting to begin, there are three things I'd like to put on the record. This is actually to the ministry, Mr Clark.

One, I was wondering if the ministry could elaborate on what elements they think might be contained in a community treatment order. We've had some representation on the ability or issue of the scope of practice of a doctor and the competence of a doctor to order certain things. For example, if housing was part of it, how does that work? I think many people are looking for community treatment orders not simply to be medically and medication-based, but to have a broader sense of what treatments and supports are necessary.

Second, could the ministry inform us of what plans they have for education out in the field with respect to these changes and the resources that will be attached to the provision of that education?

Third, what mechanism or scheme or structure will be put in place in the community to provide rights advice? Many of the provisions mandate rights advice in various aspects of the community treatment order process, yet rights advisers don't currently exist, that I'm aware of, out in the community sector. What structure—I won't call it an advocacy commission; that would be provocative—will be put in place to meet the demands of the legislation?

**The Chair:** Thank you, Ms Lankin.

#### MICHAEL ARMSTRONG

**The Chair:** Thank you, Mr Armstrong. Our little back-and-forths on these side issues don't come out of your time. We are glad you could join us here this evening. You have 10 minutes for your presentation. If you wish to allow time for questions at some point, that's up to you, or you can speak for the entire 10 minutes. The floor is yours, sir.

**Mr Michael Armstrong:** I'm a Toronto resident. I was born in 1950. I grew up in Scarborough, actually. I'm a lawyer by education. I'm an employee of the Canadian Mental Health Association, but I'm here today speaking on behalf of myself to inject a more personal note to these hearings. I was in law school with Bob Rae—even though people sometimes tell me that's not a good thing to say.

The two issues I want to touch on briefly are accountability of the health professionals who deal with psychiatric patients, and also who will define what "clinical improvement" is in Brian's Law.

As far as accountability, I'll just mention a few of the facts of my own life. I was first diagnosed at the age of 20 after having a psychotic experience. In those days, psychiatry said that if you had a psychotic experience you were automatically schizophrenic, so that was my diagnosis. That turned out to be wrong, and that was not corrected for 23 years.

I was not properly treated, needless to say. I'll just mention two aspects of that. One was a five-year suicidal depression that I was in that was not caught by the doctors. Another time I was working as a teacher. I had come out of that depression, was doing very well teaching grade 13 law. Six of my 20 students said it was the



best high school course they'd ever had. Then my doctor decided that because schizophrenia somehow magically disappears at the age of 40, I didn't need my meds any more. He took me off them. I lost my job, I lost my partner, and I couldn't pay rent for six months.

I was diagnosed as manic-depressive in 1993, and that was just the beginning of more time in hospital because of the experimentation which is the nature of psychiatric treatment. I was hospitalized three more times, for a total of about eight times.

My present doctors are quite excellent, but they were there through those three mistakes. They admitted their mistakes and they're very compassionate people. I've written to the College of Physicians and Surgeons to praise them for their work, but they still made these mistakes.

My point around accountability is that if you're going to be introducing legislation to put people in a position of being forced into treatment, you have to be very carefully aware of what you're actually doing, which is giving more power to people who, despite their good intentions, may make mistakes, because that's the nature of psychiatry. It's a very primitive science at this point, because the brain is a very complex organ.

As far as "clinical improvement," the definition does not exist in the act at the moment, but from my perspective, giving a list of my own experiences of side effects—gaining 50 pounds in three months, having permanently damaged hands, problems of balance coming down stairs, vision changes, impotence for nine months until the drug was changed, dry mouth risking teeth rot, impaired ability to walk—those are not clinical improvements. I ask the question, will that determination be left up to the doctor to decide or to characterize, or will it be left up to the patient?

As far as accessing care for myself, there was never a time when I needed to be in hospital that I couldn't get in, despite not necessarily wanting to go. I did get in when I needed to. I'm tempted to say, as a manic-depressive survivor, that if the act isn't broken why fix it?

My present situation is one of great peace and happiness in my life, great stability. I've been working now for two years without missing a day. I look forward to a much more relaxed lifestyle for myself from now on. I think spiritual growth is a great part of that, and I think that's missing from this equation of pills or treatment, in that sense, equalling successful treatment. I think there's a lot more to psychiatry than the psychiatrists want us to believe.

That's basically my presentation. Again, I just wanted to ask that the doctors who seem to be so enthused about expanding the role of community treatment orders and these sorts of treatments have some humility in the face of many, many histories—and I could go into other people's experiences as well—of mistakes that have been made along the way.

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**The Chair:** Thank you very much, Mr Armstrong. That does leave us time for questioning. We've got about

five or six minutes, so if each caucus could take a couple of minutes, starting with the government.

**Mrs Munro:** I certainly appreciate the fact that you've come here tonight to give us a very personal insight into the kind of legislation that we're looking at. So my question is based on the information that you've provided us with your own personal experience. When you talk about community treatment orders on the second page of your presentation, about being very careful, I wonder if you could give us any advice in terms of this.

Let me just tell you that on Friday we heard from some professionals who indicated that in another jurisdiction their experience with community treatment orders meant that something like 20 people out of 1,000 is the number they would be looking at that would actually—

**Mr Patten:** Hospitalized.

**Mrs Munro:** I thought it was that got community treatment orders. No?

**Mr Patten:** Yes, from New Zealand.

**Mrs Munro:** My question to you, because we're running out of time here, is: Have you got any specific ideas here when you talk about being very careful? I think you have an opportunity to give us some very important advice.

**Mr Armstrong:** I've spoken with Michael Bay on occasion, and he had been touring the province, as far as I understand, educating people about how the present Mental Health Act could work if people understood it. If there's such a problem in understanding it, perhaps it should be clarified on some levels, obviously, but I can't remember coming across any cases that couldn't have been covered by the present legislation, in my experience with survivors.

I work with Lana Frado up at the police college educating police officers about the reality of mental illness and being picked up by police and such. She is the executive director of Sound Times, which is a clubhouse for 450 psychiatric survivors. In our experiences of people needing to be hospitalized, it usually works that the people who are most ill don't get the treatment in general in the system anyway. That's her experience. So those issues need to be addressed.

I just can't see, in the spectrum of my experience, where a community treatment order would have to be introduced as opposed to just using the provisions in the present act if they were somehow clarified in language. That's my feeling about it.

**Mrs Munro:** Thank you very much.

**Mr Patten:** Mr Armstrong, thank you for coming. I wonder if you've had a chance to read the bill where it talks about when a physician is required to or feels that they would like to issue a treatment program, all of the requirements that the bill sets out: They have to name who the supervising physician is; they have to name who the other players are, what role they play; they have to identify the nature of the treatment; and, as I read it, they have to be quite specific about what the nature of this particular plan is and how it's to be implemented.



As you see that, where would you feel, either in that aspect or in other aspects, the bill could be strengthened in terms of accountability for the physicians?

**Mr Armstrong:** I think you have to define "clinical improvement" from the perspective of the patient as being the priority, and the patient's family as well. If the doctors can miss with me, five years of a serious depression, during which time I didn't even get a single antidepressant—I presume they existed; it was only in the 1980s that we're talking about here.

I think that the spirit of introducing this community treatment orders legislation has to do only with people who've shown improvement with the treatment in the past. I guess I have to get back to this: My only point was, from whose perspective is the improvement? If you're going to be forcing people into situations where they go through all these things, such as the ones that I list in my own experience, then it's a lot to ask of someone.

**Ms Lankin:** Again, let me add my words of thanks to you for coming forward. I think it's very difficult for all members of this committee to come to terms with the very polarized points of view that exist from the psychiatric survivor community and from friends and family members, particularly of those with schizophrenia, but not exclusively, with respect to this.

Your comment was that people who required hospitalization could basically get that under the old act, yet many family members will tell you endless horror stories about trying to get help for family members and being unable to get help at the time. You also said that in your view some of the people who are most seriously ill aren't the ones who get in and get the help they need.

I'm wondering if you could share with us what you meant by that. Everyone here—and many of the presenters—is saying that this is only going to apply to a very small percentage of the most seriously mentally ill with severe psychotic conditions, that those are the only people this will apply to. Why then is there such concern in the psychiatric survivor community around this? What have you experienced before that you're translating into the intent or what the application of this bill will be?

**Mr Armstrong:** The comments about the most seriously ill not getting the treatment come from my experiences with Rod Albrecht, who is the executive director of Fresh Start, which is a survivor company that employs people with mental illnesses. He actually found that his employees went from an average of 50 days in hospital before they were employed down to 1.7 days in hospital after they were employed for a year with Fresh Start, which shows the advantage of having jobs for people like myself.

I believe that the government is heading in the direction of having some form of community treatment order. Given that that's probably the case, the cases that come up with it will have to be very carefully watched to draw some lessons from them.

Acquaintances of mine are parents to a young man who is severely schizophrenic. He has threatened to kill

himself as well as to kill his family. They are desperate to get him back on medication. He would seem to be a prime example of someone who might fall under the community treatment regime. It all goes back to predictability. Is it enough for someone to threaten with words? What do you wait for to act as far as bringing out a community treatment order for someone like that?

My concern is that it be very carefully monitored so that you don't frighten people into thinking that they're going to have to put up with the chemical straitjacket that sometimes is the result of it and other related side effects, as I've mentioned. The new medications that are coming out, it seems, are a lot better in that regard, but most of them aren't covered by OHIP when it comes to people on welfare, ODSP, getting coverage for their meds. The new meds are not listed as being covered, so they're not available. We're left with these old medications and the old problems that go with them.

I can only speak up until 1996 for my life, because my life has turned around completely since then. My previous history goes back to 1970, as I said. It may be put in that perspective. My hope is for new medications to be funded. We're also alarmed and leery of community treatment orders because it seems that to make them work there needs to be a lot of support in the community, different resources available to people, including job opportunities and housing, of course, which is just so obviously a need for people. I'm not just talking about the warehousing in boarding houses that goes on now in Parkdale where I live, for example.

**The Chair:** Thank you again, Mr Armstrong. We very much appreciate your coming before us here this evening.

#### JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW

**The Chair:** Our next presentation will be from the Judge David L. Bazelon Center for Mental Health Law, our long-distance traveller for the day, Good evening and welcome to the committee. You have 30 minutes for your presentation. We certainly welcome you and look forward to hearing what you have to say.

**Ms Tammy Seltzer:** I'm Tammy Seltzer. I'm an attorney at the Judge David L. Bazelon Center for Mental Health Law in Washington, DC. I want to thank the committee for giving me this opportunity to testify. I want to say too that I'm impressed so far with the level of discourse. We're on the record, so I'm not going to compare you to your counterparts south of the border. You also started on time, which I think is quite impressive. Draw your own conclusions.

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The Bazelon Center is a national legal advocacy group in the United States, based in Washington, DC. We've been around since 1972, and we have brought most of the systems change reform litigation involving the rights of people with mental disabilities, both mental illness and mental retardation.



I'm a staff attorney at the Bazelon Center where I work on issues of what we call outpatient commitment and you call community treatment orders. I'm probably going to keep calling it outpatient commitment because that's what I'm used to. I also work on issues of criminalization of people with mental illness. I recently completed a study reviewing all of the state statutes on outpatient commitment, including the District of Columbia as well. That analysis of the statutes is available on our Web site. I've included citations in what I've submitted to you so you can go and look for additional information.

I've also spent a considerable amount of time monitoring the implementation of Kendra's Law in New York state. I am in close contact with researchers, lawyers and advocates who are working on this issue around the country. What I see as my role here is to give you sort of an overview of the United States' experience with outpatient commitment and not really to focus too much on Bill 68 in particular, because I think there are people who are obviously much more qualified than I to do that, and some of them have already spoken.

I'm first going to give you a sense of Bazelon's position on outpatient commitment. Then I want to talk about how we feel that the research on outpatient commitment has really been misrepresented on many occasions; and talk about what we consider to be the only two really credible studies that have been done; and then to also talk a bit about how states that have adopted the use of outpatient commitment have, in most cases, abandoned the use of it and why that might be; and then, finally, to talk about some of the unintended consequences of outpatient commitment.

First, in the interests of full disclosure, the Bazelon Center opposes outpatient commitment for a number of reasons—again, our position statement is available on our Web site—but most important is that we consider it really a misguided approach to a systems problem. It's trying to hold the individual consumer responsible for the failure of the mental health system to serve their needs appropriately.

Involuntary outpatient commitment appears to increase the use of services because it forces the system to make those services available to the individuals who are subject to orders. I don't know if you all have something called mental health courts here, but it's something that is new in the states to try and prevent people with mental illness from entering the criminal justice system. In those situations, a person with mental illness who has been charged with a crime is diverted to a special court.

In Florida, in Broward county, the judge who's in charge of that court said what's most important to her is the leverage she has over the system, not over the individual with mental illness. That's what makes the difference. The same thing is true when we talk about outpatient commitment orders. We believe that expanding service options would accomplish the same ends without coercion, without the trauma of a court appear-

ance and without violating the individual's right to make decisions about their own health care.

I next want to talk about how the research about outpatient commitment has been misrepresented, because we think it's important, before you consider making sweeping changes that proponents of community treatment orders suggest, that you should be aware of the literature and that you should be sceptical of some of the representations that have been made to you. The studies, which are relatively few in number, we would hold, show that it confers no benefit beyond access to effective community services.

Outpatient commitment has been offered in the United States—and I'm sure here as well—as a solution to the problem of people with mental illness who are homeless, people who are ending up in jails, who are acting out disruptively or perhaps violently in society, and also—and we always have to talk about this—costs. It has been a way that people have proposed of keeping costs down, because you don't have to hospitalize people's mental illness as much.

Proponents have argued that only with such laws can certain individuals be persuaded to utilize mental health services, but most of the studies they rely on are seriously flawed and some are presented in misleading ways.

I have attached to our statement a couple of letters from people who have actually conducted the research and have said that their research has been misrepresented. One was from the National Institute in Mental Health, in terms of some research they have conducted. They say that people are misrepresenting their numbers. Also, I've attached a letter from researchers who were involved in the MacArthur violence study, who have said that their research has been misrepresented.

It would be very tempting for us to mischaracterize research for our own purposes all the time. But as a law professor of mine said, lawyers don't make anything really productive in society that you can look at. You can't point to a building and say, "I built that hospital." I can't say, "I fixed somebody's heart valve." All we really have are our reputations, and I don't think it serves anybody's interests for us to misrepresent the research that's out there. The Bazelon Center would oppose outpatient commitment no matter what the research said. Thankfully the research we have looked at, the only research that's reliable, backs up what we're saying. We've also had conversations with researchers to talk about how we talk about their studies. We've had a lot of conversations with the folks involved with the MacArthur study to make sure we don't overreach when we talk about the conclusions in that study. I think that's important to keep in mind.

I have to quote. I'm going to quote from the letter from the researchers who did the MacArthur study. They were talking about the propensity for people with mental illness to commit violence, because often that research is cited when people are trying to get outpatient commitment laws passed. In one of the last sentences they say: "Satel and Jaffe are free to pursue this political agenda.



But we wish they wouldn't distort empirical research when it yields conclusions they find inconvenient." I think that's a pretty strong statement.

I think we all know from basic research methods that not all studies are created equal. Only two controlled studies on outpatient commitment have been conducted in the States. One is the Bellevue study, which was conducted in New York City. The other was conducted in North Carolina, and just parts of their results have been released, not all of them.

The Bellevue study found that outpatient commitments had no statistically significant effects for outpatient commitment on rehospitalization rates or days spent in the hospital. It also found that outpatient commitment did not improve compliance with medication and continuation of treatment or reduce the number of arrests or violent acts committed.

The overall findings of the recently released North Carolina study support some of the Bellevue findings that outpatient commitment has no effect on hospital use. The North Carolina study, which I'll talk about a little later, found some mixed results for some subgroups, depending on the length of outpatient commitment, that require further investigation. In the North Carolina study, hospital use actually increased for those with a short duration of outpatient commitment, which was six months or less. The only group for which hospitalization use decreased was the group that received more intensive services and outpatient commitments of six months or longer.

To talk in a little more detail about the Bellevue study, it is one of the most comprehensive and best designed studies of outpatient commitment released to date. The question it sought to answer was whether an outpatient commitment order by a court contributed any additional beneficial results when it was compared with the provision of intensive services alone. All participants in the study received these intensive, enhanced services. Some were subject to a court order, and others were voluntary participants. But the key part was that they all got the same level of services, which is not necessarily true in the other studies. So you can't say whether it was the outpatient commitment order that made a difference.

The findings in the Bellevue study are conclusive. Comparing those subjected to outpatient commitment with those who were offered access to intensive services alone, the study found—the percentages are in the document here, so I won't go into them, but if you want me to I will—no additional improvement in patient compliance with treatment, no additional increase in continuation of treatment, no difference in the rates of hospitalization, no difference in the lengths of the hospital stay and no difference in arrests or violent acts committed.

Because people were randomly assigned to the two groups, the difficult cases were evenly distributed between the two approaches. This eliminates the potential of bias in the selection of which people went to which groups. Again, that was not true in a number of the other studies. There was no control group to compare it to, so the difference may just have been that there were more difficult cases in one group versus the other.

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I think the results of the Bellevue study help to explain why other studies of outpatient commitment have been misread to support its effect. Individuals subjected to a court order for outpatient treatment are often provided services they have never had access to before, and not surprisingly, many of them do better. This is the very reason science is based on controlled studies whenever possible, and in a controlled trial an attempt is made to isolate the variables and make it easier to identify the true effect of any one factor. So if you haven't taken that into account, there are many other reasons why you could see a difference in the patients' results. It could be that the state has changed their funding, or it could be that they've changed the nature of the program. It may not have anything to do with outpatient commitment, but it may have. But you have no way of saying that with any kind of certainty.

We find the Bellevue study provides strong evidence that outpatient commitment has no intrinsic value, and where it does appear to have an effect it's because it has forced the mental health system to commit itself to helping consumers find acceptable and effective treatment for their illnesses. All other studies of outpatient commitment have serious methodological flaws, and their results have been misunderstood and misinterpreted.

I'm going to speak next about the North Carolina study, which was conducted by Dr Swartz. It has serious limitations, as I will say, but I will tell you what it found in a limited sense and then tell you the problems with it. It agrees in part and disagrees in part with the Bellevue study. Overall, hospital admissions and days did not differ significantly for participants randomly assigned to outpatient commitment of any length and those in the comparison control group who were not under commitment. But since only the hospitalization findings have been published, it's not yet possible to compare the interpretation of the total effect of outpatient commitment on the quality of life of the participants, medication compliance and other important concerns.

As I stated before, short-term outpatient commitment increased hospital use and decreased patient co-operation in this study. So outpatient commitment of 180 days or less actually increased hospital use. Participants on short outpatient commitments spent 35% longer in the hospital, 38 days on average compared to an average of 28 days for those who were not subject to an outpatient commitment. The authors attribute this to an increased sense of coercion and decreased autonomy among participants under outpatient commitment.

Now we have a very strange outcome: Long-term outpatient commitment and intensive services decreased hospital outcomes. This is contrary to what was found in the Bellevue study. They found reduced hospital stays only for participants who remained under outpatient commitment for more than six months and who also received intensive services of a median of 7.5 services a month. Neither extended outpatient commitment nor a higher level of services alone reduced the chance of



hospital admission. The authors state, "These findings suggest that outpatient commitment may exert most of its effect on providers." In other words, the outpatient commitment appears to increase the delivery of services to participants under outpatient commitment. The authors state, "This use of outpatient commitment is not a substitute for intensive treatment; it requires a substantial commitment of treatment resources to be effective."

I will highlight that the North Carolina study has several weaknesses you should aware of. First, they've only released findings on the area of hospital use. Second, of those who were under outpatient commitment for longer periods, that group for which they found that outpatient commitment may have had an effect were not randomly assigned. So again we're at that problem where it could have been some other factor in the assigning of groups that made a difference. It also doesn't describe the service use with the group that didn't get outpatient commitment. So we have no idea whether the services they were getting are actually comparable.

The other studies cited as support have even great problems. I have attached our analysis of those studies to what you've been given. Just to give you an example, in a number of those studies the sample group was 20 patients. There's no way you can draw any kind of conclusions from a group of 20 patients. Also, none of them had a control group and random assignment.

Let me also say that outpatient commitment is rarely used. It's typically a hurried response to a tragic incident, like in New York where Kendra Webdale was pushed in front of the subway by Andrew Goldstein. The National Association of State Mental Health Program Directors, NASMHP, which is an independent body that has taken no position on the use of outpatient commitment, surveyed all 50 states and District of Columbia. They found that while an overwhelming majority of the states have outpatient commitment laws, most rarely used them.

We've seen the same result in New York. When Kendra's Law was first passed, more than six months ago, the state estimated that at least 10,000 people would be subject to outpatient commitment orders. We've now seen at most 100.

We can speculate about why this might be true, and I think New York's experience might be illustrative of what's happened. I think after the initial elation of Kendra's Law passing, people became aware of two very disturbing facts. First, Andrew Goldstein didn't reject mental health treatment. The journalists uncovered information that showed he had diligently and persistently sought treatment that was not made available to him. So the state had pushed through legislation designed to force people who were unwilling or unable to accept treatment to get it, only to realize that it was really the mental health system that was unwilling or unable to provide the treatment. So they rushed again, and have now committed several more millions of dollars to provide mental health services that they could have done without passing something like Kendra's Law.

Another thing they've also done is gone to voluntary agreements. Again, we're only six months into Kendra's Law. New York City was the first jurisdiction to come up with voluntary treatments, because they didn't want to deal with the litigation. They realized that perhaps they didn't need to have 10,000 outpatient commitment orders out there, and that it was better to engage the consumer in voluntary treatment agreements. That's what we're seeing in far greater numbers than outpatient commitment orders.

Perhaps outpatient commitment has not been used because it doesn't really deliver on all of its promises. Perhaps states thought it was a magic bullet that would help them to reduce costs and help them reduce violence. Perhaps it's rarely used because service providers, who entered the profession because they felt they wanted to do some good and help people, and whose work was really based on developing these relationships of trust, feel very uncomfortable about their new role as mental health police and having to report on all their clients' missteps with treatment. As the Bellevue study demonstrates, intensive community-based mental health services are really the key to addressing the needs of people with serious mental illness.

I just want to talk really briefly about some of the unintended consequences of outpatient commitment that we have seen in the States.

First, there is a problem that I think other people have talked about, which is that it can become self-perpetuating in that it bumps to the front of the line people who have orders, which means that services are not available to people who might voluntarily want them. In the end, it means the mental health system may not see people until they are further along in crisis than they would have been had they seen them earlier.

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That also holds true when we talk about the coercive aspects, which are not benign. The court process and subsequent monitoring can be very alienating and frightening, perhaps particularly to people with mental illness who may not have had good experiences with the mental health system. Studies have shown that fear and coercion make people with mental illness far less likely to seek services voluntarily. So, again, they may not be known to the system until far later in their illnesses.

Let me point out that no study thus far has examined the effects of outpatient commitment on the system as a whole. Even though it can tell you that perhaps for this group—let's say that some of these studies are right and that outpatient commitment reduces hospitalization use for the group of people who have outpatient commitment orders. If we say that's true, that doesn't tell you anything about its effect on the entire system. Are you actually reducing hospitalization rates for everyone in the system? Maybe not. Maybe you're just reducing them for the small population but increasing them for other people because you've made voluntary services less available to other people. It's something to think about, and no one has studied that issue at all.



There are also the tragic consequences when people are picked up for not complying with outpatient commitment orders. Most states allow people to be picked up and evaluated for not complying with an outpatient commitment order. It may sound innocuous, but I can assure you that it can be anything but. A recent call I had was about a gentleman in Michigan who refused on three occasions to meet with the assertive community treatment team. A pickup order was issued and the police came to his house, surrounded his house, broke down his door, pepper-sprayed him, threw him to the ground, handcuffed him and dragged him out to their vehicle, to the hospital where he was forcibly injected with Halidol. He ended up being released a few days later because he didn't meet the criteria for inpatient commitment, but it was a very traumatic experience.

There was another recent case where a woman was so traumatized, because police were executing a pickup order, that she had a heart attack and died. Before she died, she was crying and begging the police not to take her to see any more doctors. This is not anybody who had been accused of committing acts of violence in the community; she simply wasn't returning phone calls. Her neighbours said she appeared fine to them when they saw her. But she had an outpatient commitment order, and she wasn't complying.

Some states allow people to be jailed for failing to comply with their outpatient commitment orders. We know that jails are not therapeutic environments for people with mental illness, but that's where people may be ending up.

In conclusion, let me say that outpatient commitment has been touted as a miracle cure for everything from homelessness to the high cost of psychiatric hospitalization for people in crisis. The research we've seen so far doesn't support those kinds of claims. The experience of the many states that have tried and abandoned outpatient commitment doesn't support those claims.

There are no shortcuts to treating people with mental illness, and I urge this committee to use its authority and resources to ensure the availability of appropriate, effective and voluntary mental health services in the community.

**The Chair:** Thank you very much. We appreciate your presentation and for coming all this way.

We've got only about four minutes. As much as I'd love to stretch that, I think we're already facing the prospect at the tail end of barely meeting our timeline. Under our system we have to rise when the House rises at 9:30, so I'm going to use my prerogative to available time so that the Liberals start the rotation and then Ms Lankin. So you each have two or two and a half minutes.

**Mrs Bountrogianni:** I'd like perhaps the government members or you to answer this question for me, because it'll make a big difference in how I look at the research, all the research. There isn't very much of it. I still question whether this research can actually be done, given this population. But I'll forget that for a moment.

How similar or dissimilar are the involuntary outpatient commitments in the States and what we are

proposing in Brian's Law? Are they identical? Are there differences? I hear there are medical versus legal orders. That would make a big difference in how I would interpret the research. I wouldn't generalize it to potential Canadian cases. Can anyone comment on that? I'm a big believer in research, and I don't know if this should make me stop and think even more than I have to.

**Mr Clark:** The model being put forth by the ministry here is the consent-based model. In the United States they'd call it volunteer-based, I guess. It's a volunteer committal, in essence. What we're proposing here is a consent-based model for community treatment orders, for that community treatment agreement. So it's a medical model, it's not a court-driven model.

**Mrs Bountrogianni:** You referred to it as involuntary outpatient commitment, which would reinforce what Mr Clark just said.

**Ms Seltzer:** I do, although every state has a variation on outpatient commitment. In some states they do ask that it be voluntary in the sense that the person who would be subject to the order has actually said, "Would you consider this?" In those states typically it's when the criteria are exactly the same as for in-patient commitment. This would be a less restrictive situation. When the criteria are different, as they are here, that's not the situation. There is no situation where a guardian can make that decision for you in terms of outpatient commitment. It's not comparable at all.

I can tell you that because of concerns about all the different standards that are used by the states and because of the concerns about the research, there is federal legislation being proposed to study the issue, because there are serious concerns like what you have raised, and to also ask that our National Institute of Mental Health study the issue in a way that it hasn't been studied already. But I would say, looking at the criteria for Bill 68, so far, from what I've seen, I would put this in the category of allowing more people to fall under the umbrella than fewer. It's one of the more encompassing statutes that I've seen.

**Ms Lankin:** I appreciate so much the time you've taken to come and spend with us and the thought you've put into this.

I want to make a comment about the differences between this legislation and the US legislation. People are saying that it's very different, that one is a court system and one is a medical order system, which is quite true. In some ways the court system has the ability to order the provision of treatment options in the States, which there are no teeth to do here, other than perhaps the forced medication, but the other nature of supports which can be part of court orders in the States don't exist here.

Secondly, if you were to dismiss the research, it would be quite interesting. A lot of people have been coming forward urging us to do this because all the research says that this is very effective. Here we've had testimony that discounts that, and we're talking about the same research. In fact, we received today a list of studies from the



Treatment Advocacy Center in the US which say that all of these but two demonstrate the effectiveness of this treatment mechanism. I understand they are actually a group that advocates for community treatment orders in the US.

The other comment I need to make is in response to what Mr Clark said about this being consent-based, agreement-based. I'd be interested in how those work in the States, because as I read this legislation, you have to meet the criteria for being sent for an assessment for involuntary committal here in Ontario in order to be put on a community treatment order. So there is a counterpoint in people's minds about the effect of not agreeing.

Quite frankly, the two criteria that are referred to that a doctor must find that you meet—there are a number of them, but two of them that you must find—a series of criteria that would send you for an assessment, including that you lack the capacity to care for yourself, or an explicit finding of apparent incapacity, and you've heard comments about getting rid of the word "apparent." It seems to me when there are implicit and explicit requirements for a finding of incapacity, no one is capable of consenting to this kind of treatment. You fall to the substitute decision-maker in that case and that, I believe, will be the most often experienced. If it was simply voluntary and someone was seeking that out, it's not necessary to have an order of any sort. We may be able to get there with amendments, but I don't think that's what the act provides.

Could you tell us about the voluntary approach, where it exists in the States and how it works?

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**Ms Seltzer:** Let me make two comments. The first is, I was sort of struck by that. It seemed that you had to be found to be incompetent in this proposed legislation and that's not the case in any of the outpatient commitment legislation in the States. It all actually assumes competency. That also brings up the issue of forced medication. People were assuming that because you had an outpatient commitment order, you could actually force someone to be medicated. That isn't necessarily the case, because you haven't found that they have been incapable of making the decision.

So it's a very different situation, which leads me to two places. One is that in Connecticut, where they recently considered this legislation and rejected it, they decided instead to adopt a pilot project which would be a completely voluntary peer engagement model, peer outreach and intensive services. They decided that would be more effective, or at least they were going to study to see if that would be more effective or as effective as perhaps outpatient commitment could be.

There is also the issue of talking about whether this is medical or court-driven. I think one thing to keep in mind is that although the court can have certain coercive aspects, certainly the medical model has its own coercive aspects. What the court system can bring to it is a series of checks and balances and independence that perhaps is not available when you're talking about a purely medical

model. So when you're talking about the courts, you're talking about someone who is independent, who has to be independent and who has public oversight, in a way. People also have the right to counsel, not just to retain their own but it is provided for them for free. That's a very different situation as well.

**Mr Clark:** Mr Chair, with respect to your previous decision—and I have so much respect for you, sir—it's rare for us to have an expert come up from the United States and I'd like to ask for the consent of the committee for me to ask a question.

**The Chair:** All right, on the understanding that it may cost you in a future rotation.

**Mr Clark:** We'll see, Mr Chair.

**The Chair:** Keep on time.

**Mr Clark:** Thank you for appearing today. I'm just going to ram two questions together for you here. One, you stated earlier that you do not support outpatient committals, which is the United States model of, in essence, a community treatment order. Does your organization support any form of involuntary committal?

Secondly, there was a document called *An Exploration of Outpatient Commitment's Impact on Victimization of Persons with Severe Mental Illness*. I'm not sure if you're familiar with it. It was written by Hiday, Swanson and Swartz and it states, "A North Carolina study of 184 subjects in a randomized controlled trial of persons with diagnoses of schizophrenia, schizoaffective disorder, other psychosis or a major affective disorder found that increased days on outpatient commitment significantly reduces the odds of victimization."

We've had a lot of discussion around criminalization of the mentally ill. One of my concerns has been suicide rates and victimization of the mentally ill, and yet this document supports the fact that there was a reduction in victimization as a result of outpatient committal. Do you care to comment on: (a) Do you support any form of involuntary commitment; and (b) that document itself?

**Ms Seltzer:** I'll handle the easy one first, which is that we do support involuntary inpatient commitment for people who meet a certain standard and that is a standard of imminent dangerousness to self or others. We would not oppose commitment under those circumstances at all, which doesn't necessarily make us popular, but that is our stance. We believe if somebody is truly imminently dangerous to self or others, then they should be hospitalized. I've nothing more to say on that.

The Swartz study, are you talking about the 1999 one?

**Mr Clark:** It was produced for the American Psychology and Law Society, New Orleans, February 2000.

**Ms Seltzer:** That's not the one that I have. I cannot speak to that particular study, but I'm glad that you actually asked me that question because it gives me the opportunity to say that half an hour is an impossible amount of time for us to share information.

**Mr Clark:** I know, and the Chair is hard.

**Ms Seltzer:** And the Chair is really tough. I've attached some information for you, but I would be very happy to assist this committee and make our research



analyst at Bazelon available to you if you wanted to hear his analysis of that. He may already have done it, I don't know. It's not information that I have. I'm a lawyer. I'm not a social scientist, I don't hold myself out as any kind of social scientist, but I would be happy to make his time available to the committee as well to assist you because I think it's important that you have accurate information. However we can best make that happen, I would be happy to make that happen.

**Mr Clark:** Thank you for coming.

**The Chair:** Thank you very much. I appreciate that last offer and the fact that you have come all this way to make your presentation. We apologize that the sheer number of people who have expressed interest in speaking particularly here at the Toronto hearings have prompted us to create a limit, but we do look forward to further dialogue as the members see fit and hope you enjoy your all-too-brief stay here in Toronto.

**Ms Seltzer:** Thank you very much.

#### CONSUMER/SURVIVOR AND FAMILY COMMUNITY DEVELOPMENT PROJECT

**The Chair:** That takes us to our next presentation, the Consumer/Survivor and Family Community Development Project. Welcome to the committee. We have 20 minutes for your presentation and it's up to you to divide that as you see fit between an actual presentation or a question-and-answer period.

**Mr Brian McKinnon:** I'm Brian McKinnon. I co-ordinate the Consumer/Survivor and Family Community Development Project that basically has me involved in working with these two constituencies on education and advocacy issues.

I welcome the opportunity to respond to Bill 68 or, as it is better known in the community, the "leash law." Right from the get-go, I cannot suggest any amendments, as I and many of the people I work with believe that Bill 68 is a human rights travesty and should be thrown out forthwith.

Instead, I shall pose some challenges and questions and focus my remarks on a couple of key topics, that is, the limits to treatment and the likely impact of community treatment orders on psychiatric survivors, some topic areas that apparently most MPPs know very little about—not that you need to know everything, but this bill does require that you know more than is evident in this drafting.

It is not my expectation that these remarks are going to impact the direction of the bill, but some form of opposition has to be registered as this bill amounts to the proverbial worst nightmare for psychiatric survivors, community mental health workers and many family members. They believe that community treatment orders are an overwrought response to overblown fears and that the Mental Health Act is sufficient to protect both the public and an individual at risk. They also see CTOs as highly discriminatory and that CTOs can only reinforce negative stereotypes and stigma against people with mental health problems.

The Minister of Health and a government spokesperson portray the CTO program as a "balance of rights and safety," and as "empowering," but really that is patently Orwellian. How can lawmakers revoke the essential rights and liberties of thousands of CTO-eligible survivors and say that it is empowering, as if these people are going to thank you for it? Yes, there are people who will be thankful for relief from psychosis, and I can understand why they would feel that way. And I do understand why some desperate family members will say that the government did the right thing. However, there are many more so-called "special interests" who know that there far more thoughtful and respectful ways to proceed with regard to offering relief and empowerment than to be, sad to say, so extreme and duplicitous.

CTOs are troubling in and of themselves, but the commonsense version that has been prepared for Ontario is uncommonly cruel and unusual punishment for psychiatric consumers and survivors. I say that because Bill 68 is written as though it is open season on the mentally ill. The expanded criteria for CTOs include just about everybody who is dealing with a serious mental illness, particularly schizophrenia. The terms of Bill 68 are so broad and wide open that it can only lead to an increased abuse of power and an intensification of stigma.

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The government says CTOs are not in response to the dangerousness issue; they acknowledge that on a proportional level the so-called mentally ill are not more dangerous than mainstream society. Then why are they as a group being singled out as being undeserving of their rights as citizens and needing exceptional and draconian measures? Is it because the mentally ill are generally seen to be needing need tough love? Is there a strong fiscal motivation? Will CTOs mean fewer costly hospital beds, as promised by the psychiatric wing of the Ontario Medical Association?

Myself, I originally thought that CTOs would be introduced in a limited fashion as a response to proven dangerousness; not that I would agree with that, but I thought that they would be applied in a focused fashion. But doctors themselves say dangerousness is a red herring and that CTOs are mainly about the treatment imperative, that so-called incompetent people have an absolute right to treatment so that they do not die with their boots on, to quote an SSO spokesperson.

The last reason is at least honourably motivated—that is, life-saving—but is it premised on safety and good outcomes numbers? We need to focus on the treatment that is in store for the subjects of CTOs to answer that question.

Allowing for the veracity of schizophrenia as a disease or, more aptly, as a brain disorder, one would be deluded to think that treatment is a panacea and, even allowing for the terrible side-effects of the anti-psychotics, that treatment is sure-fire. Not at all. Approximately 40% of the people for whom the stuff is prescribed do not respond in any significant fashion, except for being heavily drugged. In their case, the worst features of psychosis may be suppressed but in no way alleviated. In that



condition they are by no means cured. They just become the walking wounded and, as time goes on, be assured they will become progressively more wounded.

Are you in any way aware of the effects of the stuff that is commonly referred to as medication? Even when it is working at its best it is still the lesser evil. People who can't bear it and stop taking it refer to it as poison, a neurotoxin. By the same token, I must add that I am not entirely anti-medication, just pro-informed-consent.

In spite of the medications' serious faults, there are many people accepting this treatment because they want relief from psychosis and it is all that is available. They are frequently living in poverty and isolation. They can barely tolerate the treatment and now, owing to CTOs, will face a deepening of stigma and hopelessness. Is it any wonder that people get paranoid or suicidal?

And what are CTOs going to do for the people who faithfully take their medications and still act in ways that are extreme and problematic? The subway pusher, Mr Cheung, was taking his antipsychotic prescription. Nonetheless, he was still in crisis, sought help and didn't get it. CTOs would have done nothing to save the life of that unfortunate young woman. CTOs would have done nothing to address Cheung's use of cocaine, his loneliness, his sense of worthlessness or his deep-seated misogyny.

I visited a family recently where the man, who happens to be a gentle soul, had faithfully been taking anti-psychotic medication. Still, I saw in the bathroom pockmarks where he had been banging on the ceiling with a baseball bat to get the quiet people upstairs to be quiet. Later, his discomfort reached a boiling point. He went upstairs and confronted his quiet neighbours. He reacted to their denials of noise-making by slapping the woman. This is just to show you there are clear limits to the value of medication as it relates to anti-delusional properties and also with regard to anti-violence properties.

What I am saying is that weird and tragic things happen to people and to the people around them, whether they are on or off the anti-psychotic medication. As the pillar of psychiatric treatment, the anti-psychotics cannot be relied upon.

The so-called atypical neuroleptics are by no means problem-free; the risks remain. At a recent Centre for Addictions and Mental Health forum in London, ACT team psychiatrists described the problems attached to one so-called wonder drug, Clozapine. She had to alert the OPP to find a man who had left town because his blood tests indicated a critical white blood cell depletion. She was more than a little relieved they were able to find him in time.

As I acknowledged before, there will be people who will say: "Thank you for CTOs. They saved my life." But others will die, and recent deaths at Queen Street bear this out. Two of the people who died were on Clozapine and were only in their 30s and 40s. These were people whose deaths are owing to the treatment, complications attached to the treatment, as well as to the lack of access

to good medical treatment. The coroner can say they died of natural causes, ie heart failure, but people in the mental health community generally know otherwise.

What about the 50,000 suicides that have been recently reported with people on Prozac? What does that number mean to us? Is that just collateral damage in the war against mental illness or is that a damning comment on the excesses of corporate psychiatry as well as medical irresponsibility? And what if the family member, as the substitute-decision maker, says no to the ordered treatment? Simply, they can be overruled as not acting in the ill relative's best interests.

Imagine if that was the general rule of procedure with other client groups. Take my nine-year-old autistic son, for example. He cannot talk and expresses his frustrations or his anger by smacking himself in the head. It breaks my heart and I want him to stop it. So what if in seeking help I encountered a specialist who could order aversive shock treatment, who said that the treatment was in his best interests and there was nothing I could do about it? I would be shocked and horrified and I would want to do bodily injury to that specialist. That wouldn't happen, you may say, and you are right, one, because I am basically a non-violent person and, two, because in most areas of human care that level of professional power now seems backward. So why is it that throwback behavior and attitudes against the mentally ill are still countenanced by psychiatry and the government?

By the way, I'm not saying I wouldn't want specialists to try to improve my son's condition, but I'm just saying that sometimes there is not a lot that can be done to address an intractable condition—I'm not saying that schizophrenia always is, but sometimes it appears that way—and that we should not put blind faith in self-important authority figures who purport to know it all, when in reality they are just experimenting on people who are profoundly challenged and less fortunate than those of us whose faculties are in good working order.

Some of the consequences of Bill 68 for psychiatric consumers and survivors in Ontario: People will be hard-wired to prescriptions for potent and risky psychotropic drugs and will likely get no information about the long-term adverse effects, ie Parkinsonian disorders and neuroleptic malignant syndrome. The reassuring analogy that is made is that this stuff is like your insulin equivalent. You will just have to take it for the rest of your life—that is, if it doesn't kill you first in those extreme instances. We may see psychiatrists ordering regular ECT treatments as part of the CTO package, and you don't know what you're getting into here.

There will be an intensification of the already widespread epidemic of brain damage that relates to the widespread use of neuroleptics. The media will be complicit in this problem because rarely does the media say anything more about the anti-psychotics than that they have terrible side effects. To my knowledge the major media have never done an in-depth story on the risks and dangers of the anti-psychotic medications. There will be more willful, aggressive certitude on the part of the



doctors, who shamelessly bully and patronize their clientele. You may doubt that, but be assured it happens.

If the entire CTO process is supposed to be in the patient's best interests, who will be there for the patient when the psychiatric treatment is running counter to his medical interests and the psychiatrist is too proud or neglectful to question the wisdom of the ordered treatment? There are still far too many people being over-medicated, even though medical evidence shows that the minimal dosage is the therapeutic ceiling. What's stopping doctors from getting on board with that simple truism? Why are people still so seriously overmedicated? Maybe it's not about therapy. Maybe it's about control, in many instances. What it is ultimately going to lead to is that people are going to be forced to go underground to avoid treatment, or worse, give up and take their own life.

Some closing remarks: I acknowledge there are situations where people are in desperate straits and where forced hospitalization has saved people from hurting themselves or others. I know that sometimes it is necessary to take firm and decisive action, especially when it truly becomes a matter of saving somebody's life. But that is why we have the current Mental Health Act, which already involves extraordinary measures for extraordinary circumstance. Why do we need the drastic overkill represented by community treatment orders? A charter challenge may well show how misguided and wrong-headed this whole initiative has been.

**The Chair:** Excuse me, Mr McKinnon, we've already hit the 15-minute mark. Could I ask you to wrap up in less than a minute, please?

**Mr McKinnon:** Sure. Two minutes, how about that?

**The Chair:** No. How about one minute? I've been very indulgent and, again, we've got a lot of people waiting behind you.

**Mr McKinnon:** All right. That'll be OK. Anyway, it's up to the courts to determine how wrong-headed this has been.

I'll offer one recent court decision that may give you cause to reflect on the wisdom of Bill 68. In November 1999, an appeals court in Indianapolis ruled that a schizophrenic patient cannot forcibly be given medications he or she objects to unless there is clear and convincing evidence that it will benefit treatment of the condition and not just control behaviour. The appeals court said that even with an involuntarily committed patient, the state must show that the medication substantially benefits the condition being suffered and not just in controlling the individual's behavior. It added that the benefits of treatment must outweigh any risks or personal concerns of the patient.

For real progress to occur we will need the government, the Ministry of Health and the institutional mental health system to fairly address themselves to the reality of psychiatric survivors' problems and struggles. Instead, there is the Ministry of Health's talk of a mental health system second to none that is seamless, coordinated and integrated—so much hype and happy talk which conflicts

horribly with the impoverished and perpetually challenged lives of those who have been forced on to the margins of this mean-spirited, tax-cut-obsessed society that is more rapidly going from bland, to bad, to mad and worse. Psychiatric survivors, their families and all of Ontario deserve better.

In closing, let me remind you to remember your power, exercise it wisely and keep your minds open. Thank you very much.

**The Chair:** Thank you. Forgive me, I should have said at the 20-minute mark that your session was up, but I appreciate your taking the time to come before us here today, and appreciate the perspective you brought to the hearings.

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### GRAEME BACQUE

**The Chair:** That takes us to our next presentation, Mr Graeme Bacque, if Mr Bacque would come forward, please. Thank you for joining us here today. You have 10 minutes for your presentation. You could make it a presentation or a question-and-answer period, as you see fit.

**Mr Graeme Bacque:** My name is Graeme Bacque and I'm a psychiatric survivor. I will not be using the word "consumer" in my remarks, since I long ago escaped from and have since successfully evaded the mental health system for many years. There is also the fact that the term "consumer" suggests freedom of choice. The truth is that available, voluntary options within the system are already severely limited and will disappear altogether if this legislation is enacted. There are clearly no legitimate choices made available through coercion.

It is my understanding that we are here to discuss possible amendments to this draft bill. On this basis, I will say categorically from the start that there is only one possible valid amendment for this legislation, but it is one of the utmost urgency. Simply put, this bill must be amended by immediately tearing the thing into numerous small pieces, then ensuring that it is placed on the curb for collection with the rest of the day's trash. This legislation is, purely and simply, an irredeemable human rights travesty.

If this government were serious about community safety or enhancing the quality of life for persons labelled mentally ill, it would instead enact Edmond's Law in memory of the late Edmond Yu. This proposed law would place severe restrictions on the actions of the police or any others who on occasion may find themselves wielding literally life-or-death power over ordinary people, and would end forever the prejudicial targeted policing of disadvantaged communities.

Another appropriate legislative proposal would be Cinderella's Law, in memory of Cinderella Alloulouf and the numerous others who have died of gross neglect or abuse in the Queen Street Mental Health Centre and similar facilities. Cinderella was a person who found herself placed at the mercy of shrinks and other medical



personnel who were so intently focused on what they believed to be wrong with her mind that they apparently forgot to provide for what was happening to her body. Under Cinderella's Law, these irresponsible hospital personnel would have found themselves facing court proceedings for their gross criminal negligence, along with the prospect of being permanently stripped of their professional status.

Still another helpful statute would be Jennifer's Law, in honour of 20-year-old Jennifer Caldwell, who died so horrifically when her makeshift shelter caught fire this past March. Jennifer's Law would establish in Ontario, once and for all, the natural, inalienable human right to decent affordable housing and impose a binding obligation upon governments at all levels to ensure provision of such.

In addition to the above measures at the provincial level, amendments to the Criminal Code of Canada are required that would extend protection under this country's anti-hate laws, specifically to persons who bear a psychiatric label. Such would provide some justice to the late Joey Pace, a homeless man who was viciously kicked to death under an Oshawa bridge last November by two men who didn't like how this quiet, gentle soul presented himself to the world. Such amendments might also have offered some protection to Michael Wilson, who was the target of a heinous, unprovoked attack that left him critically burned just before Christmas of 1999.

Such amendments to criminal law, if properly enforced, would also hopefully block future attempts by the province to implement spiteful, stereotype-driven measures such as these proposed amendments to the Mental Health Act and the Health Care Consent Act. They might also prevent the recurrence of the yellow, grossly misinformed journalism that demonized these innocent human beings and basically set the public stage for legislation of this kind.

What we as survivors require for our emotional well-being is no different from anyone else, namely, decent accommodation; meaningful work at a living wage or accessible, adequate income supports when steady employment isn't possible; and the support of a strong, caring community of friends who respect our wishes and right to make our own personal decisions. It is along this path that lies personal empowerment and true emotional healing.

What Brian's Law offers us instead is arbitrary loss of liberty under the flimsiest of pretexts, being subjected to forced ingestion of body-destroying, mind-and-spirit-numbing chemicals, even in our own homes, and still greater demonization at the hands of politicians, media and members of the public alike. It imposes a possible sentence of crippling movement disorders such as tardive dyskinesia or Parkinsonism upon us, or even a potential verdict of death through neuroleptic malignant syndrome, increased susceptibility to heat stroke, immune system compromise, or any of the other myriad known effects of the commonly used psychotropics.

Even worse is the fact that it makes the move of singling out a specific sector of innocent persons from

the broader community for rights abrogation and repression on the basis of criteria that are little better than superstition.

Ultimately, it is clear that this legislation is intended to serve as a companion piece to the Safe Streets Act, the plan to enforce mandatory drug screening upon social assistance recipients, and a municipality-administered program of targeted policing of poor and homeless persons. As such, it represents the latest and most blatant effort by this government to silence and render invisible the victims of its earlier policy decisions.

If there is one thing this government can rest assured of, it is that implementation of this legislation will be vigorously resisted by survivors and all true advocates of civil and human rights. Such acts of conscience are the right and in fact the moral obligation of any responsible citizen when they are faced with a dangerous, unjust farce of a policy such as Brian's Law.

I have made copies available of my presentation to the clerk for anybody who wishes them. I thank you for your time and attention.

**The Chair:** Thank you, Mr Bacque.

JOHN De SOUSA

**The Chair:** Our next presentation is from Mr John De Sousa. I believe Mr De Sousa is here. Welcome to the committee.

**Mr John De Sousa:** Thank you for the chance to present what I've been witnessing for the last 10 years in regard to my son's life. I'm going to read it because I don't want even a comma to be missed.

My name is John De Sousa. I have a son who has suffered from schizophrenia since 1990. Five years ago he stopped taking his medication secretly, and as a consequence commanding voices became active. At the hospital, while waiting for the psychiatrist on call, I asked him what kind of commanding voices he was getting. He then said that he had to save the world, and that in order to do so he had to kill the devil. When I asked him how he would recognize the devil, he stood up, pointed to me, and said, "You are Satan."

After he was admitted, my wife was the only person he would visit with.

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At that time, I was less afraid for my life than for what he could do to himself should he carry out the mission. Later, controlled by the medication, he would realize what he had done and he would kill himself as well because he loves me.

I am a senior and my wife is getting there too. When natural death terminates our lives, the community treatment orders will be the only life-saving factor in my son's life or other lives. I know. I've seen what may happen. Confirmation of this presentation can be obtained from Dr Pendharkar, psychiatrist at Credit Valley Hospital in Mississauga.

In closing, Brian Smith was not an isolated accident. Brian was a target of commanding voices that must be



carried out. The government can make it possible that no other Brian Smith happens again. Thank you very much, sir. This was my presentation.

**The Chair:** Thank you, Mr De Sousa. You've left us six minutes for questions if you wish to take them.

**Mr De Sousa:** I just have a comment. I'm sad; there is a reason why no patients who suffer from schizophrenia come themselves to present their cases. Also I'm sad that although I understand the survivors of mental health who don't want to be forced to take medication, what I don't accept is the fact that they are fighting for their rights; they are taking away rights of people who don't even know they have rights when they are suffering with schizophrenia. That's it, sir. I thank you.

**The Chair:** Thank you very much. I appreciate your coming down and making your presentation before us today.

### PEOPLE AGAINST COERCIVE TREATMENT

**The Chair:** That takes us to our next presentation, People Against Coercive Treatment, Mr Don Weitz.

**Mr Don Weitz:** I have some extra copies of a second submission that's also from the same group. I'll leave a copy of my own submission here.

**The Chair:** Welcome to the committee. We have 20 minutes for your presentation.

**Mr Weitz:** My name is Don Weitz. I am a psychiatric survivor and also a person who was once labelled schizophrenic. I certainly know what it means to be stigmatized and discriminated against and to be forcibly drugged, humiliated and degraded for many years as a result of the label. I always thought I was competent and I told my doctors so. Fortunately, I was never labelled incompetent while I was locked up for 15 months.

On behalf of People Against Coercive Treatment, PACT, I am angry but proud to submit this statement demanding the immediate killing of Bill 68 or Brian's Law, angry because this bill legislates force and the threat of force; angry because force and the threat of force are at the core of coercive involuntary psychiatry; angry because this committee and government have uncritically accepted psychiatry's medical model of mental illness and parroted the well-known psychiatric myth and stereotype about the violent mental patient and the ideology driving much of this bill, if not all of it.

#### *Interjection.*

**Mr Weitz:** Yes. I've got it on the right and the left. I certainly am not in support of the right as you'll soon find out, if you don't know already. I'm a lefty and a very proud one.

Anyway, that's why this submission is titled No to Psychiatric Fascism.

First, a few words about myself and PACT. Almost 50 years ago, I was labelled "schizophrenic" while going through a normal identity crisis and was locked up for 15 months in McLean Hospital. That was outside of Boston. Many of the men I lived with were survivors of electro-

shock and/or lobotomy. I was afraid I was going to be another victim or guinea pig. And I was. Within two months of admission, I was subjected to the torture of insulin shock, over 50 subcoma shocks and one coma shock in a six-week period.

This so-called treatment was supposed to cure my "schizophrenia." Instead, it scared the hell out of me and wasted me. Almost every day as the insulin lowered my blood sugar to severe hypoglycemia, I suffered incredibly intense hunger pangs, physical weakness and convulsions. I once lapsed into a coma and thought I was dying. The psychiatrists never once warned me of the possibility of coma, nor of any of these horrendous and debilitating effects. When I told a psychiatrist the insulin was torturing me and pleaded with him to stop the treatment, he laughed and said my complaints were just evidence of my illness or lack of insight, the same type of response, the same type of duplicity and deceit I've encountered in many psychiatrists today at Queen Street, at the Clarke, you name it.

By the mid-1960s, insulin shock went out of psychiatric fashion, partly because of its high death rate, which I once read was as high as 5% to 7%. But it was never banned or outlawed in North America. Dr. Frederick Banting, co-discoverer of insulin in Toronto, never once publicly criticized its use in psychiatry. He should have.

Today, though, we have better treatments, right? Electroshock, ECT, which is much faster, more efficient than insulin shock in causing brain damage. The chief targets of electroshock are women, yes, women, particularly elderly women. I have statistics to back up everything about shock treatment over the last 15 years in Ontario. An alarming number of children have also been shocked, another well-kept secret in North America, but not in England and other places in Europe. Despite serious criticisms in the medical literature as well as media protests in Canada and the United States, electroshock is still legal in every state and province. It should be banned. It's a crime against humanity.

After release from incarceration and forced shock treatments, I promised I would never again become a victim or guinea pig of psychiatry, and I haven't. Instead, I've become an anti-psychiatry and human rights activist in the worldwide psychiatric survivor movement called Support Coalition International, a coalition of approximately 80 survivor and advocacy groups in 11 countries including Canada and the United States. Since the early 1970s, psychiatric survivors and human rights activists have been organizing and fighting back against psychiatric oppression.

People Against Coercive Treatment is a proud member of SCI and the No Force Coalition in Toronto. You'll be hearing more about the No Force Coalition, I believe, when Erick Fabris talks this Wednesday.

#### **2030**

PACT is a grassroots organization of psychiatric survivors who came together in the winter of 1998 to fight against the Harris government's proposed amendments to the Mental Health Act. Those proposed changes included



forced outpatient treatment in other words, forced drugging in the community. Psychiatric survivors and their advocates at the time were not invited to participate in the government's five-week secret consultation on mental health reform approximately two years ago.

In February 1998, when Dan Newman, the legislative assistant to Health Minister Elizabeth Witmer, chaired a community meeting of over 100 psychiatric survivors and advocates at the Raging Room restaurant in downtown Toronto, every one of us who spoke out—and there were close to 30, if I remember correctly—told him we were totally against the “reforms.” Why? Because they featured forced treatment and threatened our freedom and other human rights, just as Bill 68 threatens to do now. Nevertheless, in their so-called community consultation report, Newman and Witmer arrogantly and irresponsibly ignored our flat rejection of their mental health reforms and caved in to the lobbying of the Schizophrenia Society of Ontario, the Ontario Medical Association and the Ontario Psychiatric Association. All these organizations are heavily funded by the drug companies and support forced drugging and locking up family relatives and other citizens labelled schizophrenic or seriously mentally ill—which is the going term these days, whatever that is; psychiatrists can't even define what mental illness is, never mind “serious”—people who have already been seriously abused, permanently damaged and dehumanized by so-called safe and effective brain-damaging neuroleptics such as Haldol, Thorazine, Clozapine and Zyprexa; antidepressants such as Prozac, Paxil and Zoloft as well as electroshock, physical restraints, solitary confinement and the daily humiliation, degradation and abuse of psychiatric incarceration.

Under a community treatment order, the treatment typically consists of neuroleptics and/or antidepressants. Both types of so-called medication cause many serious psychological and physical effects including apathy and indifference, painful and involuntary movement disorders, brain damage and death. As listed in PACT's educational package, titled *Justice Rights Freedom Denied*, which you should have because it was passed around as relevant background material, these are the main effects, not side effects, of psychiatric drugs which the public generally does not know because the psychiatrists, drug companies and corporate-controlled mainstream media don't want you and other citizens to know. They're afraid that if we have this information, we—that is, the survivors and people locked up—just might refuse their safe and effective medication, which would mean less income for doctors and less profit for drug companies and the media.

Listen to these effects, all documented in the Compendium of Pharmaceuticals and Specialties and the Physician's Desk Reference, the standard reference works in medicine: lethargy, depression, apathy, nightmares, impaired thinking, vomiting, emotional dullness, fainting, dizziness, blurred vision, eyes stuck upwards, drooling, constipation, skin rash, amenorrhea, impotence, epileptic seizures, liver disease, infections, intestinal paralysis,

heart problems, low blood pressure, painful muscle cramps and spasms, arching of the back, restlessness, Parkinsonism, zombie-like effect and sudden death. Since the vast majority of doctors do not warn or educate their patients about these many common and serious effects, the ethical-legal principle of informed consent is routinely and shamelessly violated.

Members of PACT and the No Force Coalition and thousands of other psychiatric survivors will resist any bill or law which subjects us to more forced drugging, more electroshock, more torture, more incarceration without a hearing or trial and more violations of our human rights.

In the United States, a community treatment order is called involuntary outpatient committal, or IOC, as you just heard from Tammy Seltzer. Both sanction forced drugging. In the United States, IOC bills frequently authorize court-ordered treatment. Some people have died while under this court order. Take Ricky Herron, an African-American man who was only 35 when he died suddenly while under a court-ordered treatment in Eugene, Oregon. Here is an excerpt of a report on Ricky's death:

“Ricky was under a court order, and was required to take a powerful neuroleptic drug—Clozapine—over his expressed objections.

“Two eyewitness mental health workers testify that Ricky complained of side effects, but higher-ups ordered that his complaints be ignored.... Ricky was showing signs of a syndrome known as neuroleptic malignant syndrome, but staff had never received training about this potentially fatal hazard. Ricky managed to walk into Lane County Mental Health headquarters, where he collapsed. He died on January 27, 1995. For a year, no report came out of LCMH, but anonymous sources directed us to the hospital autopsy report. The autopsy showed the Clozapine had literally fried Ricky's neuron cells, causing neuroleptic malignant syndrome.... a lawsuit ... is pending.”

It could just as well have happened here in Toronto.

Just as alarming, there is scientific proof that powerful neuroleptics such as Clozapine, Thorazine, Haldol, Modecate and Zyprexa can change the structure of the brain, in other words, cause brain damage. I've listed two major recent very authoritative references you should definitely read if you're concerned about how so-called safe and effective these great miracle drugs are while people under court order are subjected to them. As we speak, thousands of my brothers are in great danger of developing neuroleptic malignant syndrome, which has a 25% to 30% mortality rate in Ontario. No one mentions this in the press—a big secret.

No doubt there are other Ricky Herrons. Unfortunately, drug-related deaths are rarely reported or publicized in Canada and the United States. I predict there will be more such tragic deaths, just as there is an alarming increase in numbers of homeless deaths, as CTO laws are soon enforced in Canada, unfortunately, by the police and the 51 assertive community treatment



teams, the so-called ACT teams, proposed last month by Health Minister Elizabeth Witmer. We understand there are currently over 20.

Bill 68, particularly the CTO section, is based on and promotes two myths, but I'll emphasize one because it gets played every time there's a death involving a psychiatric patient. This is the myth that mental illness and violence are inextricably linked. The violent mental patient is on the loose. You have to catch him with CTOs. The other myth is that psychiatrists or physicians can predict violent behaviour, when they absolutely cannot. Even the American Psychiatric Association admitted that they can't in a famous case in California in 1983.

The myth that the mentally ill are more violent than sane or normal people is still irresponsibly propagated by many reporters, editors and producers in the mainstream media in Canada and the United States. I know what I'm talking about, because I monitor it a lot on the CBC and others and in the *Star*, the *Globe* and you name it. The frequent use of the word "order" and the alarming expansion of police powers targeting allegedly mentally ill citizens in Bill 68 reflect this myth. Here are a few excerpts from scientific articles published in medical journals over the last four years exposing and denouncing this myth and cited in the PACT educational package, which you have:

"The combined evidence ... indicates that ... persons with psychotic diagnoses are less likely or at least no more likely to commit violence." I'll just skip down, because I know that time is running out.

"Most patients with severe mental illness don't pose a danger to themselves or the community." It's worth repeating: The vast majority "don't pose a danger to themselves or the community."

"Sensationalized reporting by the media whenever a violent act is committed by 'a former mental patient' ... a weak association [exists] between mental disorders and violence.... Serious violence by people with major mental disorders appears concentrated in a small fraction.... Mental disorders ... account for a minuscule portion of the violence that afflicts American society." That's from the well-known and frequently quoted Monahan and Arnold consensus study.

"There was no significant difference between the prevalence of violence by patients without symptoms of substance abuse and the prevalence of violence by others living in the same neighborhoods who were also without symptoms of substance abuse.... 'Discharged mental patients' do not form a homogeneous group in relation to violence in the community."

I'll skip down, because you've seen others here.

"People who suffer from depression, anxiety, schizophrenia, an eating disorder or any other type of mental disorder are somehow more violent"—that's the stereotype—"than others." This simply isn't true.

The main trigger for violence for many people is substance abuse, that is, some kind of addiction. It has nothing to do with so-called mental illness.

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In medicine, there is absolutely no justification for forced treatment without informed consent, except in cases of life-and-death emergencies. Psychiatric emergencies and "mental illness" are in the minds of the controllers. Drugging, electroshocking or lobotomizing people against their will or without informed consent, I remind you, is assault, an offence under the Criminal Code of Canada.

Just to wind up, I want to say that I was privileged to be an invited juror at the international Foucault Tribunal in Berlin, Germany, in May 1998. I insist that I have to read this because this is not known. This has never been published in Canada. This is a historic statement against the use of force in psychiatry under any circumstances. This was an international, 11-member jury from four countries: Germany, Israel, the United States and Canada. It goes like this:

"We conclude that, being unwilling to renounce the use of force, violence and coercion, psychiatry is guilty of crimes against humanity: the deliberate destruction of dignity, liberty and life. Most of all through the legal category of "mental patient" which permits a total deprivation of human and civil rights and the laws of natural justice.

"Furthermore, psychiatry cannot pretend to the art of healing, having violated the Hippocratic oath through a conscious use of harmful drugs, which caused in particular the worldwide epidemic of tardive dyskinesia, as well as other interventions which we recognize as tortures: involuntary confinement, forced drugging, four-point restraints, electroshock, all forms of psychosurgery and outpatient commitment.

"These practices and ideology allowed the psychiatrists during the Nazi era to go to the extreme of systematic mass murder of inmates under the pretext of 'treatment.'

"Psychiatry not only refuses to renounce the force it has historically obtained from the state, it even takes on the role of a highly paid and respected agent of social control and international police force over behaviour and the repression of political and social dissent.

"We find psychiatry guilty of the combination of force and unaccountability," and you've got the rest of the statement.

In conclusion, I have to say that this bill is one of the most repressive and unjust. I've lived in Toronto for over 30 years, and I've been active. This cannot be justified on humane or ethical grounds.

My major recommendation is this: Bill 68 must be killed. It shouldn't see the light of day. If you don't want to withdraw it, then this committee and government will risk being labeled a promoter of psychiatric fascism. PACT and other survivor and advocacy groups will not be silent. We will not be passive. We will actively resist this bill by any means necessary, because this bill authorizes forced treatment and directly attacks our human rights. We're sick and tired of being targeted, and



we will not be targeted any more by this or any other bill from your government. That's all I've got to say.

**The Chair:** We've actually gone slightly over time, but we appreciate your making the presentation.

JOSEPH TEDESKO  
AL BIRNEY

**The Chair:** Our next group is shown on your schedule as one individual, but apparently two individuals have agreed to split their time. Could Mr Joseph Tedesko and Mr Al Birney come forward, please. We have 10 minutes for their presentation, to be split as they see fit.

**Mr Joseph Tedesko:** My name is Joseph Tedesko. I welcome hearing about the proposed government changes in this bill.

I have a son, who was confirmed as a schizophrenic in 1983 at North York General Hospital. At the time he was brought in for assessment, Dr Clark confirmed that he was supposed to go to Whitby. He kept him at North York for three weeks. He was on drugs there, like a zombie, and it was pathetic. I couldn't believe that this was the way they would help him, but they said that was the start of it. However, in the three weeks he showed little improvement. I begged Dr Clark not to send him to Whitby and he said, "That's the only course I have." I said, "Well, I don't want him to go there."

They finally discharged him in the fourth week, and he came home to myself and my wife. We split up. My wife thought I was harsh and hurting my son, and she moved out with my son. He got worse and worse. I couldn't help him. While I was away, she was keeping him, saying, "No, he didn't go on medication." He was missing school. However, he was mistreating her, he was seeing things, he had delusions. Nobody helped him. I called the doctor again—North York General Hospital—and he said, "If he doesn't want to come in, we can't do anything."

This went on for three years. In 1985, I had him committed again, because he broke my car windows and threatened to kill me. Whether it was true or not, I was afraid. They picked him up again and confined him a little while in Queen Street. He wouldn't co-operate, and they let him out. I said, "Why let him out?" They said, "Let him go out and burn himself out." That's the answer.

He stayed with his mother. His mother is older than I am. She's in a seniors' residence, and he's been going in with her. He's been informed many times that Metro would kick her out because she cannot have him there. I bought an old truck and I gave it to him. He's sleeping in an old truck today. Now he's 37 years old. This is nearly 18 years now.

He needs accommodation. The pension he's on—naturally everybody says it's not enough, but what is enough? He doesn't have rent. You can't get rent of \$100 a week. He won't stay with me. He'll stay with his mother, but she can't take him. She can't live with him. He's abusing her, and I know that.

He's violent at times. He's been in court so many times. He's been in court on assault charges, and they let him go on probation. Every time, the judges let him off, with a little kindness and a good lawyer. They don't let him off because he's good; he's not good. Right now he's on probation, and he's living in a truck on the street. His main course is, he needs accommodation. Who's going to give him accommodation?

I agree with this bill. Hopefully, if it's a reasonable bill, he might be able to go on medication. How are they going to go about it? I don't know. But I'm hoping that something will happen before he either gets shot—I don't think he'll kill anybody, but he's abusing his mother to the point where I think she won't last long. I can't take it.

We've gone into debt so often for so much, it's caused a divorce in our family, and here I am today pleading, like other parents. I'm bewildered to hear some people oppose what the government tried to do—not to force it to a point, but I know there's help. Why are they opposing it? They don't live in a house where people are like that. They don't realize. They have a point to say they have rights. Well, what rights? We all have rights. So I'm pleading.

I'm giving up a little more time than what I want to say. I could write 10 sheets of submissions, but I'm going to hand it over to Al Birney, a friend of mine who has a son in the same situation.

**Mr Al Birney:** It is indeed a pleasure to be here this evening. I appreciate the five minutes you are allotting me.

One thing I would like to mention is that we're here on behalf of the seriously mentally ill, not the worried well. I am so happy tonight that we heard some testimony from the back of the hall saying how they've been cured. Well, if they've been cured of this disease called schizophrenia or mental illness or whatever the case may be, then they are adding to society. They're obviously working people, so they don't need government aid. We are not here looking for government aid. We are here to get our kids off the streets.

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This won't do me very much good, to be very honest with you, because I really have a story to tell. I started two and a half years ago to try and get a fence on the Bloor Street Viaduct. We have lost over 400 people there. We have lost an armful of mentally ill people. We hear the same thing all the time: "If you put a fence on this bridge, where are we going to jump? We have a right to jump where we want to jump." This is not important. If you were putting lights in downtown Toronto, you'd have the same people coming, making the same presentation.

Three seriously mentally ill people in every 25 homes, 46% attempt suicide, 12% succeed, and the majority of these people are not on medication. If they were, we wouldn't have this problem on the streets in downtown Toronto. We're not advocating picking up everybody on the streets, no. But as parents, we have a right.

I have a very brief statement here I would like to read.



"My wife and I would like to say how grateful we are to your government, sir, and to the members of the opposition, for having the courage to deal with long-overdue changes to the Ontario Mental Health Act.

"Our son has a serious mental illness called schizophrenia. This is a cruel and debilitating disease. Its symptoms include hallucinations, delusions, low energy, memory and concentration problems, paranoia and thoughts of suicide. Because there is so little understanding of schizophrenia, there is so little sympathy. As long as our son was on medication he could cope. He enjoyed a good quality of life. He enjoyed his family, his work and leisure time. He had a good rapport with his business associates. Our son had a charismatic personality," perhaps a little like his old man here—I'm just adding that.

"However, when he neglected taking his medication, he became an entirely different person. His thought processes became impaired and his health gradually deteriorated to a point where he had to be hospitalized. Like so many patients, he took the advice of street professionals who advised him that medication was not necessary for his health."

These are the doctors who are walking the streets who have the right to come to our kids and tell them: "Go off medication. It's going to destroy your mind." Remember that. However, when he neglected the medication, this is what happened:

"As parents of an ill child, we know the part of his brain that is impaired by the illness is the same part that is expected to decide sensibly on whether or not to take medication. It is so difficult for us to stomach the patients' advocates who blatantly deny this truth.

"As a result of our son's illness and the hopelessness of his condition, he sought to end his suffering by jumping off a bridge. We are still awaiting a phone call or a get-well card from those Philadelphia lawyers who oppose medication without consequences."

They have never even phoned our son to see how he is or how he's doing, with a back broken in a couple of places and just absolutely messed up. You know what it's like when you jump a length on to a bridge. But these people never even sent him a get-well card.

"As parents and caregivers, we beg you to listen to the families of the mentally ill. We are not paid for our opinions and we are not on the government payroll. Our opinions are formed from the pain and suffering of our family experiences, not propaganda. It is distressing for us to think that some patient advocates and indeed some seriously mentally ill patients could possibly stifle this much-needed legislation—CTOs.

"Parents do have an intimate interest in the well-being of their children. They should be given every encouragement and every right to seek what is best for their ill child. Our dream is to see all those suffering with schizophrenia, and indeed all mental diseases, restored to health and strength to become functioning members of society.

"Too many of our loved ones roam the streets, exiled from health and society, lost in time as if in a medieval

city. Meanwhile, our government does far more to protect their liberties, including the right to refuse medication, than to preserve their very lives.

"As family members, we are not advocating CTOs for all mentally ill patients or homeless, simply, those ill patients who are a danger to themselves and to society or have a long history of repeated hospitalization due to their failure to take medication.

"Patients should have the right to medical treatment, to have the newest, best medications, to receive adequate community services when discharged from the hospital. Many do not enjoy this support due to the inclusion of the word 'imminent' in the Mental Health Act. It is impossible to reach the second and third bases of recovery when the word 'imminent' keeps patients from the first base of medical treatment. This word is a hindrance and should be removed from the Ontario Mental Health Act.

"It is ironic for a seriously ill patient to tell his doctor he does not require medication. The very symptoms of schizophrenia are delusions and paranoia—false beliefs that doctors and parents are part of a conspiracy to harm the patient.

"Please expand the criteria for outpatient committal so patients can and must take medication after they go home. Please represent our family on this most important life-saving matter. Pass the newly proposed amendments to the Mental Health Act with swiftness and pride. Many, many families have been waiting too long for these urgent changes. There are three mentally ill patients in every 25 homes. Almost half of those ill patients will attempt suicide and 12% will take their own lives. Time is of the essence. We need your help.

"Sincerely, Al and Kathleen Birney."

This is my wife right here and we've taken the time. We have just arrived in from Europe, so we've got a bit of jetlag. I want to thank you all so much for listening. We appreciate this. Our kids need your help.

**The Chair:** Thank you both for coming forward and joining us here today and for the perspective you've brought to our hearings.

#### QUEEN STREET PATIENTS COUNCIL

**The Chair:** Our next group up is the Queen Street Patients Council, if you could come forward please. Welcome to the committee this evening. As a group representative, you have 20 minutes for your presentation, to be divided as you see fit between either a presentation or question-and-answer period.

**Ms Jennifer Chambers:** The Queen Street Patients Council is a non-profit board of psychiatric consumers and survivors who act as a voice for the same in the Queen Street catchment area, which is the GTA now. I'm the outreach advocacy education coordinator for the Queen Street Patients Council. My job description keeps getting longer.

Despite public safety having been mentioned repeatedly in the ministry's consultation document, this legis-



lation does not in fact address issues of public safety or restrict itself to forcing treatment on to the so-called seriously mentally ill. Dangerousness and incapacity are addressed under the current legislation, as are leaves of absence and powers of attorney. "Imminent" is interpreted by the courts to mean within months.

What this legislation does allow is a much larger cross-section of the population of people with psychiatric histories to be held in custody and to be released only after the threat of continued custody extorts consent to a community treatment order. For example, someone who spent only two days in a psychiatric facility years before or 30 days three years ago can now be incarcerated or forced to comply with harmful treatment without having caused any kind of problem for anyone.

I understand if the Ontario Medical Association has its way, forced treatment won't even be restricted to people who have in fact been in psychiatric institutions. This does not, as they suggest, destigmatize our population any more than locking innocent people in jail would destigmatize the criminal population.

People's capable wishes can be overridden in this new legislation. The family can be removed as substitute decision-makers if they do not agree with the doctor. Families can be required to force compliance or to report on their relatives.

I'm going to address some of the popular myths that are held in society that support the belief that expanded committal criteria and community treatment orders are necessary. The first and most important myth that's widely socially believed is the myth about dangerousness. It's difficult to pick up a paper or to look at movie ads without seeing some association between "psycho" and "killer." Unfortunately, this tends to be applied to our entire community.

Recently in Ontario a few isolated cases of violence by people with psychiatric histories have resulted in enormous publicity, exaggerating people's fears about lunatics out of all proportion to reality, ironically enough. In fact, research shows that people who have psychiatric histories and are living in the community along with other people are not more violent than the other people in the same community, unless they also have a substance abuse problem, which is an entirely different issue and should be addressed in its own right.

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Furthermore, psychiatrists cannot reliably predict dangerousness. Science research has shown that they cannot predict whether a person will act in a dangerous manner. In fact, their predictions on an individual level are wrong over 80% of the time. Even the best research, for example, the new violence risk assessment guide, hasn't been able to surpass this on an individual level.

Reading from some of Canada's foremost researchers in the area of violence, Grant Harris and Marni Rice at the Penetanguishene Mental Health Centre, they observe that for offenders at lowest risk, evidence suggests that supervision, detention and treatment actually increase the risk of violence.

Diagnosis of schizophrenia is associated with a lower risk of violence and offenders with schizophrenia were less likely than a matched control group of non-schizophrenic offenders to commit further criminal and violent offences. Recidivism in each group was predicted by the same variables and these variables are not associated with mental illness; they are in fact related to age, history of criminality and violence, interpersonal hostility, rule-breaking etc. They suggest that what should actually be addressed are changeable features, such as people's substance abuse problems and hanging out with criminal peers.

There is a confusion of cause and effect in the public's mind, in that there is a belief that mental illness causes homelessness. In fact, the research shows the other way around is the way that the cause-and-effect relationship actually flows. People who are homeless become emotionally and mentally disordered as a result of their continual vulnerability, the ability to constantly be victimized by crime without any safe place to retreat to. Research also shows that more important to someone in any mental health service is their ability to have stable housing.

The result of this is that the solution for people living on the street is actually affordable and subsidized housing, not psychiatric treatment. Provide the affordable and subsidized housing and then see what else people need from that point.

The other belief about people with a psychiatric history is that crises are caused by problems entirely in their own heads. Even if someone has a psychiatric history, crises tend to come from life events: loneliness, poor health, unemployment, lack of decent housing, poverty. All of these things are what trigger personal crises in people.

Another commonly believed myth is that psychiatric drugs are a kind of magic-bullet solution for people. When we're talking about forced treatments, I'm fairly certain we're talking primarily about psychiatric drugs, usually neuroleptics. I also feel I need to mention that many of the people who presented here today are people who have had the label "schizophrenia" at some point in their lives and function without any kind of psychiatric treatment today.

Research shows on average that neuroleptics, which are the drugs commonly used to treat people with a diagnosis of schizophrenia, are helpful for a minority of people, approximately 34%. For this number of people they delay relapses. Some evidence suggests that even in this case, neuroleptics are equivalent to placebos or simple sedatives.

There has been other research showing that more effective than putting someone in a psychiatric institution is putting people in supportive housing in which, in a very small number of cases, psychiatric drugs are used, but people get the help of non-professional, supportive individuals who help them work through their crises and their trauma. There was a study done of this alternative that compared that approach with putting people in the



psychiatric hospital where 100% of them received psychiatric drugs. In the short run they did equally well. In the long run the people in the housing did better on social integration, having friends, that sort of thing. There is a psychological term that gets applied but I forget what it is.

As you've heard at some length today, people are also at considerable danger of harm from psychiatric treatments despite their success rate being so low. Side effects will be experienced by 90% of people; 30% of those people will have side effects that are permanent. When you're talking about people's brains, this is a very serious situation to have.

Some other research that's little discussed is that people who receive a diagnosis of schizophrenia actually have a fair chance of considerable improvement, even without psychiatric treatment. There is a study that found that 27% of people in even a chronic, back ward case improved completely and had no further psychiatric treatment.

Psychiatric diagnoses have been shown repeatedly in research to be highly unreliable and therefore lacking in scientific validity. There is great inconsistency in the diagnoses that people receive if they simply go from one doctor to another. The treatment that they receive flows from these diagnoses, making that also very scientifically unreliable.

I think people have explained well and at length today the problems of forcing treatment on someone. What you may not be aware of is that most people who are in the psychiatric system are survivors of abuse. To retraumatize people by forcing substances into their unwilling bodies is abusive and certainly cannot help facilitate any kind of therapeutic relationship with someone who might help them to heal.

It's erroneously assumed that there are all sorts of good resources available that people have to be forced to take advantage of. There are resources people have been asking for for years, that people feel will help them, that are not available: more non-medical crisis centres, like the Gerstein centre where there are mobile crisis teams and safe beds and people who will problem-solve; affordable housing for people, with supports available to people as they want to use them; livable levels of income support. There was a study finding simply supplying people with more money reduced their use of in-patient hospital beds, actually saving millions of dollars. Jobs, including consumer-survivor initiatives, provide incomparable value for social support; real jobs and self-help advocacies. Self-help and peer support groups vastly reduce the in-patient hospital days that an individual spends in a year, again saving the government millions of dollars.

We need accountability for services—for example, mental health and advocacy—to the people they exist to serve, consumers and survivors. Among other things, this also ensures value for money.

I'm going to read a little excerpt. Something that's popularly believed, and hopefully, you'll tell me if we're wrong, is that the people who will be enforcing the

community treatment orders are the new ACT teams that have been funded. There has been some new research coming out of the United States, a review of the literature on PAC teams in the US from which the ACTT model originates. I want to tell you about some of the negative effects of PACT that have been found in the research.

There is a large study, a randomized control trial, of 200 homeless, seriously mentally ill, leaving an urban jail system by Solomon and Draine. It aims to test the effectiveness of PACT compared to individual case management and to a no-intervention control group. This study noticed the high recidivism rate, 56% among the PACT group, compared to 22% among case-managed individuals, and 36% among the control group.

It suggests that coercive case management may defeat the goal of increased independence and is antithetical to the general principle of client self-determination. A second negative effect possibly related to the coercive elements of PACT is increased incidence of suicide in PACT settings. One study reports eight clear-cut and one possible suicide among the subjects. It was a long-term study conducted by the PACT originators. There may have been one additional suicide in that study as well. It's hard to determine.

Another study, by Hoult and colleagues, reports that during the eight months presenting at Macquarie Hospital 10% of the project, but none of the control patients, were reported by relatives as having attempted suicide. Another study found in the cohort of 189 patients, five died of self-harm in the 20-month study, three PACT, two control. Several PACT patients were judged to be improved by a PACT expert immediately before they committed suicide. This points to the problematic nature of psychiatric evaluations. Psychiatric tools appear to be unreliable, both in preventing suicides and in identifying suicidal individuals. These three PACT suicidal patients had unusually persistent care, which raises the question of whether coercive scrutiny can be counter-therapeutic.

All the research that I've presented in our paper is available to you. I've brought some articles along today, if you have any interest in exploring these issues further. You're welcome to contact us for any more information that you want.

**The Chair:** Thank you very much. That leaves us about two and a half minutes per caucus for questioning. Ms Lankin, the rotation starts with you this time.

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**Ms Lankin:** My apologies. I was trying to ascertain whether Wednesday's Hansard is available yet. I don't actually desperately need it for tonight, but I would like to have that as soon as they can be done. I understand the competing needs of the House with night sittings, how much that is, but it's helpful as we are going through these to be able to refer to some of the things people say, not just what's on the printed text that we receive.

One of the questions I would like to put to you, given your role in advocacy and patients' counsel work within the system, is to get your comments on a proposal I have been floating at the hearings so far about establishing a



mental health advocate's office, a concept similar to the British Columbia office of mental health advocacy. From my understanding it's similar to the office of the child advocate here in Ontario. It is not a patients' advocacy. We have those in the system and they play an important role, but it's to look overall at the mental health system, to understand where our system is not serving people well. I think maybe the only unifying issue out there between those who support and those who oppose community treatment orders is an understanding that there is a lack of resources and that individual patients looking for help and resources and family members looking for help for their family members have a difficult time.

I think it might be advantageous to have someone overseeing that, monitoring that and reporting back to the ministry and the Legislature so that information becomes available. It also, if this legislation is passed, could provide the role of monitoring the implementation of the legislation so that we understand in the long term what is happening. Is it working? Is it living up to the promise that those who so desperately want to get help for their family members believe it will live up to? Is it living up to the horrors and the nightmares of those who are so afraid of the imposition of this kind of regime? I have no doubt that if the government proceeds, we will all do what we can to make this work well as opposed to badly, but to have some kind of a monitoring mechanism of that and resources in the system.

Do you have any comments about that, how it would work, and whether you think it would be helpful?

**Ms Chambers:** You're talking about basically a systemic advocacy program that might also have, say, a research component?

**Ms Lankin:** Yes.

**Ms Chambers:** It sounds like a good idea. I would hope that it would have significant involvement of people who have been recipients of psychiatric services.

**Mr Clark:** First, just to correct the record, at no time have assertive community treatment teams been touted as the enforcers for community treatment orders. I'm not sure where that came from, but at no time has the government proposed that. Assertive community treatment teams may play a role or a component in providing service to a patient that has an agreement with a physician or psychiatrist for a CTO, but they're not the enforcers. It was never proposed that they would be.

One of the concerns I have had throughout this process, and my colleagues here can attest to that, is the issue of victimization and the issue of high suicide rates among the seriously mentally ill. It's never been, for me personally, an issue of protecting society. I know that's what the press has portrayed it as; I understand that. I think there's a larger degree of concern for me about the number of suicides that occur.

I have to tell you, I had a lady visit me whose son was caught in the revolving door, and he eventually committed suicide. He's not the only one. I've had three or four come to me in my own constituency office. Do you feel that a community treatment order wouldn't help

individuals like that, where they're simply refusing to take their treatment? You can't possibly be telling me that they have a right to commit suicide.

**Ms Chambers:** I don't think that community treatment orders would reduce the risk of suicide. I think what this study shows, for example, is that coercive relationships between service providers and their clients actually seem to increase the risk of suicide. In addition, psychiatric drugs such as antidepressants, for example, have often been shown to increase the risk of suicide. In fact, they're often used to commit suicide.

What reduces suicide risk is primarily social connection, self-help, having a meaningful opportunity to do something like work just to give you a reason to get up in the morning, living in housing that isn't a nightmare to live in. We have to try these measures to reduce people's risk of suicide before we do anything to impose something on someone, which can only reduce their sense of self-esteem and self-worth and their ability to trust others.

**Mr Clark:** You can understand the difficulty the families might have, where they've seen their son or daughter react fine to the medication; there are no suicide attempts while they're on the medication. They come off it and that's when they become suicidal. You can see why they would believe that being on the medication is the only thing that's saving their son or daughter's life. You could understand that.

**Ms Chambers:** Yes. Every case is different. Sudden withdrawal from drugs, for example, can also cause people to have severe reactions. I can't really address these particular people's cases.

**Mr Patten:** You referred to examples where part of the population may not respond to drugs or some parts have adverse effects, and I don't dispute that. What we're really talking about, relatively speaking, is a very small, perhaps less than 2%, 1% of hospitalized individuals. It's 1% maybe of the 1% of the whole population with mental illness. It's that group, for me—my motivation in attempting to deal with this is to put a stop to or to try to get someone treatment; not to control them, for God's sake, but to get them treatment, because every time they go into the hospital—and it's happened. I've got case after case; in some cases, 155 times, if you can imagine. The person has never been able to be well because as soon as the person is stabilized—not well, just stabilized—that person is able to say, "Thank you. I'm out of here," and has a right to leave. The person leaves, goes somewhere, whatever it is, maybe feels better, maybe doesn't, and the meds are down the toilet. Three months later, four months later, boom, he's back in the hospital again.

That revolving-door syndrome, as you know, is a very tiny percentage of the total population, even in the mentally ill category. It's a subgroup. It is a group where there are people who are desperate, either for themselves, the worry of a family or what have you. We heard tonight from a couple of parents. I hear this all the time. Three weeks ago I had a phone call that one young fellow had



committed suicide, finally. He was never able to get the treatment. I'm asking you—

*Interruption.*

**Mr Patten:** No, I don't understand that.

**The Chair:** Come to order.

*Interruption.*

**The Chair:** Mr Weitz, you're out of order. This is your last warning, please. We listened to your presentation.

*Interruption.*

**The Chair:** You started with the trampling on the rights of free speech. Mr Patten is just as entitled to his point of view and his question. I'd ask you to reflect on that and the somewhat ironic position you're putting yourself in. Please come to order or I'll have security remove you. Mr Patten.

**Mr Patten:** My question is about that tiny group who have responded well in the past. Do you have a response to that or do you just say, no, everyone is totally free to even place themselves in a continual non-well situation?

**Ms Chambers:** With respect, sir, the legislation actually does allow a very broad section of people to be coerced. The way this legislation reads, it would allow a much broader section of the population to be institutionalized and subsequently to be treated because it doesn't require the person to be any kind of danger to themselves or anyone else. All it requires is that at some indefinable point in the future they're liable to physically or mentally deteriorate. Actually, the way the legislation reads does not restrict it to a very small percentage of people.

I question whether if something is considered to be very helpful from the perspective of the individual, they would stop being involved with it. In my experience, if people on an individual level find something to be very helpful, they do continue with it. There is some research that shows that a lack of what's called treatment compliance is actually a difference between the service provider and the care receiver's view of what's important and what's being addressed. In my experience, if the person is actually getting the problems they consider to be important addressed, they will continue with whatever the caring relationship is providing them.

**The Chair:** Thank you, Ms Chambers, for coming before us here today. We appreciate your presentation.

2120

#### PATRICIA TESKEY

**The Chair:** That takes us to our final presenter for this evening, Ms Patricia Teskey. I'd ask you to come forward, please. We have 10 minutes for your presentation, to be divided as you see fit. Welcome to the committee.

**Ms Patricia Teskey:** My name is Patricia Teskey. I'm speaking as the mother, primary caregiver and substitute decision-maker for my son who has schizophrenia. I am a single parent and he is my only child. My son lives with me in my home, but has been in hospital since March 15. He's going to be discharged this coming Friday, May 19.

My son is not homeless or on the street. He does not lack social services. My son is ill and he needs treatment. My son had his first psychotic episode in September 1996, three and a half years ago. At that time, he was 23 years old and was about to begin his fourth year at York University. He was looking forward to graduating with a bachelor of science degree in environmental studies. He was an A student, and several professors had commented on the quality of his research and writing. That summer of 1996, he had a summer job in the field that promised to lead to professional employment after graduation. He was manager and co-captain of the local ball hockey team. He was a popular young man with many friends.

In September 1996, everything changed. My son began experiencing paranoid delusions. He began being tormented by messages on the radio and television. He began thinking there was a widespread conspiracy against him and that the people in control of the conspiracy were a family in our neighbourhood. I was worried. I took him to our local general hospital in east Toronto where he was diagnosed as having schizophrenia. Since September 1996, the world has been a nightmare of suffering for my son and myself. He has been hospitalized eight times in less than four years. The last four hospitalizations have been traumatic for both of us, requiring that I go to the justice of the peace for a form 2 and call the police to take him to hospital. Today, at 26, my son is unemployed. He was unable to complete his university degree. His former friends no longer phone, visit or invite him out. Most of our family members avoid contact.

Why has he deteriorated and suffered so much when new medications are available that have minimal side effects and when research shows that early intervention with appropriate treatment can reduce symptoms to the point where the afflicted person can function well?

During his hospitalizations, the present Mental Health Act has allowed my son to be treated while at the same time protecting his rights through an appeal system. The Consent and Capacity Review Board has conducted two hearings for my son, both of which have found him incapable of understanding that he is ill or the consequences of accepting or rejecting medication. After each hearing, as his substitute decision-maker, I have consented to his receiving medication. He has been given the new anti-psychotic medications, Risperdal, Seroquel and olanzapine, and has not experienced any adverse side effects. On these medications, his delusions subsided, his paranoia subsided and his ability to function significantly improved. In fact, he was able to manage a part-time job for about a year and a half on the medications. The problem is that at present no legal mechanism exists to ensure that my son continues his medication after discharge from hospital. This is the importance of Brian's Law.

A total of five different doctors have told my son and I that it is imperative that after discharge from hospital my son stay on medication and continue treatment in order to remain stable and able to function. Unfortunately, the



disease itself confuses him and prevents him from taking his medication. Every time he has been discharged from hospital, he has gone off medication and his condition has deteriorated again, leading to yet another psychotic breakdown and another hospitalization.

As his mother and substitute decision-maker, I do know that he suffers terribly from this disease. He is continuously tormented by the voices. He thinks I can stop them. He begs me to help him. I try to help him. I take him to the hospital, to doctors. He is given medication and stabilized and then the present mental health law lets him down. He is discharged from hospital with nothing to ensure that his treatment will continue. The cycle of suffering continues. He has told me that he has wanted to take his medication, but the voices tell him not to. The disease itself sabotages him. My son is only 26. What he has expressed all his life is that he wants to be employed, to enjoy relationships, to lead a satisfying, productive and fulfilled life. All of his doctors have agreed that none of these things is possible for him without his medication.

That is why I'm here today, to urge you to support community treatment orders. My son is confused by the voices. He responds well when structure and clear-cut imperatives are given to him. He does not have the ability to make decisions. Bill 68 would ensure that my son continues to receive medication and treatment after discharge from hospital. Community treatment orders would enable him to live in the community and, instead of deteriorating, to function well with his symptoms under control.

Critics of Brian's Law say there are not sufficient community resources to carry out community treatment orders. However, in east Toronto, where we live, there is an ACT team that has already taken my son as a client. Nurses and social workers on the ACT team have already

visited him in our home and in the hospital and are establishing a relationship with him. I have seen them establish contact and a relationship with my son, and you have to be impressed with their ability. They go into the home where there's a person who is psychotic. They know what to say, how to act and how to establish a relationship. The psychiatrist on the ACT team is also on the staff at the hospital and is able to provide a smooth transition from hospital to home and community.

People like my son deserve more than to be abandoned to the ravages of their disease. Critics of Brian's Law talk about respect for fundamental rights. What kind of respect does it show if we, as a society, have for so long stood by and watched them deteriorate, become impoverished and homeless, suicidal and in some cases a danger to others, all because of the false notion that medical intervention would be a violation of their right to choose?

My son did not choose to become ill. People with schizophrenia do not choose to live with this disease. They do not choose their tormented, lonely, impoverished and empty lives. Four in 10 people suffering from schizophrenia attempt suicide and one in 10 is successful in ending his or her own life. That is the prognosis for people like my son if they do not receive appropriate treatment.

On behalf of my son, and others like him, I urge you to please support Bill 68.

**The Chair:** Thank you very much for your presentation. We've used the 10 minutes, but we genuinely appreciate you taking the time to come down and share those very poignant words with us tonight.

Committee, we stand adjourned until Wednesday at 3:30, back in this room.

*The committee adjourned 2131.*





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First Session, 37<sup>th</sup> Parliament

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(Hansard)**

Wednesday 17 May 2000

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Mercredi 17 mai 2000

**Standing committee on  
general government**

Brian's Law (Mental Health  
Legislative Reform), 2000

**Comité permanent des  
affaires gouvernementales**

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 17 May 2000

Mercredi 17 mai 2000

*The committee met at 1534 in committee room 1.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

CANADIAN CIVIL LIBERTIES  
ASSOCIATION

**The Chair (Mr Steve Gilchrist):** Good afternoon, everyone. I call the committee to order for our continued hearings on Bill 68. Our first presentation this afternoon will be from the Canadian Civil Liberties Association, if Mr Borovoy could join us at the witness table, please. I see you have two associates, if they could come forward as well. Welcome to the committee. We have 30 minutes for your presentation, which you can divide as you see fit between either a presentation or a question-and-answer period.

**Mr Richard Patten (Ottawa Centre):** Do you have a document or paper, a handout?

**Mr Alan Borovoy:** No, we have to rely on our charisma.

For today, since we of course represent the Canadian Civil Liberties Association, I have Steve McCammon, our associate counsel, on my right, and a field representative, Andy McDonald-Romano, on my left—that is physically and not politically, necessarily.

Since we have not been able to review every aspect of this bill, our remarks today will focus on one area, and that is the widening of the powers to involuntarily commit. Principally, we're interested in the deletion of the word "imminent" and the addition of the words "substantial mental or physical deterioration."

When this bill was introduced, much was made of the fact that it's being called Brian's Law and that it is supposed to prevent repetitions of the kind of tragedy that occurred with respect to the newscaster Brian Smith. We

find it difficult, however, to see a clear relationship between these amendments and the objective it was supposed to serve.

In the first place, the deletion of the word "imminent": "Imminent" was never used to restrict situations where bodily harm was the consequence that was anticipated. It was only used to describe committals that could be permitted in order to prevent a serious physical impairment occasioned by a person's lack of ability to look after himself. That's what it was used for, and not for serious bodily harm.

As far as "substantial mental or physical deterioration" is concerned, that of course is broad enough that by sheer happenstance it might catch some potentially dangerous people, but it is obviously not designed for that. It has nothing to do, particularly, with dangerousness. Indeed it's capable of applying to a wide variety of situations that have nothing to do with dangerousness.

On that basis, it would appear that at least one of the objectives of this bill, to protect tomorrow's Brian Smiths, as far as these amendments are concerned, is irrelevant.

Now let's take a look at the wisdom or appropriateness of putting in the criteria "substantial mental or physical deterioration." Try as I may and look as hard as I do, I'm unable to appreciate the distinction between "substantial physical deterioration" and "serious physical impairment." I don't know where one leaves off and the other begins. Indeed, to me they look like rather synonymous terms.

As far as substantial mental deterioration is concerned, this might be able to enable numbers of Ontario families to ensure that their afflicted loved ones get the treatment they so badly want them to get. The difficulty is that it is so wide that it may be capable of applying to numbers of other situations as well.

## 1540

Then we look at, what are the definitions? What can help us? What does "substantial mental deterioration" mean? No definition for it. There is a definition for "mental disorder," but not a very helpful one. It's a disease or disorder of the mind. There's apparently no attempt anywhere in the bill to limit these things to any recognized set of diagnostic criteria. But even if it were limited, we're talking about a very hazardous exercise.

We've been looking recently at the publication of the American Psychiatric Association, DSM-IV, which is

probably the source of the most officially recognized diagnostic categories there is, and it appears to us that we're talking about a lot of vague and highly subjective criteria. I do not, of course, expect you to take my word for it. I brought with me some excerpts from leading scholarly journals in the field of mental health. They are commenting on the diagnostic categories used by the American Psychiatric Association.

First from the Australian and New Zealand Journal of Psychiatry: "First, the introduction of explicit diagnostic criteria and new classification categories in psychiatry took place in the context of a discipline that still lacks conceptual coherence and hence remains easily influenced by ideological, political and market forces. Secondly, there are inherent shortcomings in the design of these classification systems which limit their usefulness and make them liable to misinterpretation or misuse. Except for rare instances, hardly any DSM-IV diagnosis relies entirely or primarily on objective signs or tests."

In the May 1998 issue of the Psychological Bulletin: "The research is perhaps complicated by common sources of error. Two sources in particular are emphasized here: biases in sampling and biases within the diagnostic criteria themselves. The potential for such biases is illustrated for a wide variety of mental disorder diagnoses.

From a Netherlands journal, which I am unable to pronounce, March 27, 1999: "According to the results of recent epidemiological studies, over three million of the people in the Netherlands per year are supposed to suffer from severe mental disorders. The high prevalence should be regarded in connection with the diagnostic criteria and interview techniques applied. The final results of such studies depend upon where one draws the dividing line between clinically relevant mental disorders and normal problems of life."

The same sort of the thing in the Journal of Personality Disorders, summer 1998: "It is now apparent that there are a number of different ways in which the differential sex prevalence rates for the DSM-IV personality disorders could reflect a sex bias, including diagnostic constructs, basic thresholds for diagnosis, biased population sampling, biased application of diagnostic criteria, biased instruments of assessment and biased diagnostic criteria."

Social Science and Medicine, February 1997: "Research in women's health has revealed the difficulties female patients experience in their attempts to receive accurate medical diagnoses. Depression may be misdiagnosed in 30% to 50% of female patients."

Psychiatric Services, March 1999, "Issues in the psychiatric assessment and evaluation of African-American patients include diagnostic bias that resulted in overdiagnosis of schizophrenia."

Commentary magazine, probably one of the leading intellectual publications in the English-speaking world, one that self-describes as small-c conservative, written by a psychiatrist: "What was thought to be true today is often revealed to be false tomorrow. As a result, the final

decisions by the experts on what constitutes a psychiatric condition and which symptoms define it rely excessively on the prejudices of the day. Embedded within these hundreds of pages of the diagnostic manual are some categories of disorder that are real, some that are dubious in the sense that they are more like the normal responses of sensitive people than they are to psychiatric entities, and some that are purely the inventions of their proponents."

Now, in that connection we took a look through DSM-IV and some of these are rather suggestive of a phenomenon that this writer is referring to: attention deficit-hyperactivity disorder, oppositional defiant disorder, selective mutism, social phobia, generalized anxiety disorder, premature ejaculation, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder.

Which of those are supposed to be genuine? Which are simply dubious? Which were the creations of the category writers? I don't know. Nor am I suggesting that it's necessary to agree with all of what these commentators have said. But the very least we should appreciate is that we are talking about very controversial subjects, and at the very least we should also be able to recognize that the diagnosis of mental disorder is at best a hazardous exercise.

This is not to impugn the benevolence or the competence of our mental health professionals. It is simply to question their omnipotence. The issue is not their character or ability. The issue is the nature of their discipline. Inevitably woven into their discipline is a whole question of, how much is it influenced by value judgments, not clinical judgments; by philosophical and ideological preferences?

Take a look at DSM-IV. You see words such as "inappropriate" and "excessive." Those are not scientific words. Those express value preferences—ones that maybe in the circumstances most of us would agree with, but nevertheless value preferences.

Consider the fact that a few years ago homosexuality was listed as a mental disorder and today it is not. The decision to remove it, I suggest, went way beyond clinical judgment. It was also an ethical judgment. The decision was made, largely for ethical reasons, that it was inappropriate to continue treating homosexuals as though they were mentally disordered.

All this might well be acceptable and digestible if we were talking simply about the voluntary relationships between doctors and their patients, but we're talking here about coercive power—the power to confine and medicate people against their will. And it's for that that we have to be so concerned about the risks of having these things affect our judgment, of having these things affect the judgment to use this kind of power against people in our society. In fact, we must be concerned that today's psychological diagnosis could be obliterated by tomorrow's philosophical preferences. That's an awful power to repose in any group of people, and it's for reasons of this kind that those of us involved in the



reforms of the late 1970s, as I personally was and as the Canadian Civil Liberties Association was, urged a more restrictive power where these issues are concerned.

1550

More and more people began to recognize at that time that the ability to distinguish an unacceptable pathology from acceptable nonconformity was beyond the ability of any of our elites to provide. This simply is not a subject that most elites can tell us about. On the other hand, since the ability to recognize an urgent situation was less encumbered by the risk of ideological baggage, there was an increase in the pressures for the coercive power involved to be confined as much as possible to those kinds of circumstances. That's how we got the narrow criteria that have existed in the Mental Health Act to these many years.

At least as far as the Canadian Civil Liberties Association is concerned, we never believed this was going to have a good outcome. We took the position that it was not possible to have a good outcome. These situations are so painful and so difficult that whatever was likely to happen was going to be a bad outcome, but our position was that narrower powers of the kind that were ultimately adopted were significantly less bad than having a number of open-ended criteria being able to mandate some of the most pervasive encroachments that a society can perpetrate on any individual. It's on that basis that we took the position we did.

I'm sorry to note that, in a very real way, with this bill we are having to relive that history of the late 1970s, because what is involved in at least the two categories I've been talking about here are once more ill-defined, undefined and unarticulated criteria serving as a mandate for the forcible confinement and medication of people against their will. It is the open-ended nature of these criteria that we are speaking against.

It's interesting to note that in our criminal law our society would never stand for this. There we insist on the most objective and precise standards it's possible to create. I do not understand why we are so prepared, in view of the comparable risk to freedom, to countenance in the mental health area what in the criminal area we have no difficulty rejecting.

This brings me back to the conclusion, and that is that the Canadian Civil Liberties Association calls on this committee to reject these two amendments: In our view, "imminent" should be preserved and "substantial mental or physical deterioration" should be removed, all of which is, as always, respectfully submitted.

**The Chair:** Thank you, Mr Borovoy. That leaves us with about eight minutes, so just under three minutes for each caucus. The rotation will start with Ms McLeod.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Thank you very much, Mr Borovoy. I'm anxious to get you to respond more specifically to a concern about the type of situation in which you feel an individual might be inappropriately and involuntarily admitted to hospital. Obviously, you've said you're not going to deal with the community treatment aspect of it. I guess I'm a little bit

concerned in asking my question, so let me be honest about that, because I do feel as though by taking such a broad approach to the issue of definition, in terms of the lack of specificity of definition, you may have also done a disservice to the issue that people are concerned to deal with, which is the reality of mental illness. In using both neuroses and psychoses components of the DSM-IV, which you have used, without separating what may be seen as neurosis and what may be defined as psychosis, I think you've mixed those, and in using an analogy to homosexuality—

**Mr Borovoy:** I'd be happy to take you through some of the psychotic ones as well.

**Mrs McLeod:** I guess that's what concerns me. I think the analogy to homosexuality, if I may, is an unfortunate one. It was an unfortunate one at the time. But I think it takes us away from dealing with the concern for—admittedly by everyone who has spoken to the bill and been involved in it, it's a concern for a very narrow population of people who have in fact a mental illness in an acute psychotic state, which is an illness defined by being amenable to medication and for which for a number of reasons that person is not able to take their medication.

I recognize there may need to be some redefinitions in this legislation to make it clear that it's a very targeted population we want to talk about. But if I could get you to focus on that targeted population, if the bill addressed that narrow population, what dangers do you feel the bill poses?

**Mr Borovoy:** With great respect, I think you are asking me the wrong question. I appreciate the fact that there are numbers of people whom most reasonable people would like to have medicated because of the terrible circumstances in which they're living. I don't deny the reality of that. The difficulty, however, that I think must be addressed is that when you create criteria in a statute, those criteria then become available not only for the people you think ought to be the targets of these powers, but wide varieties of other people as well, because the definitions are that broad that they're capable of sweeping in the others.

Ultimately you can do either one of two things, or either one of three things, I suppose. I don't want to limit your choices. You can rest with the status quo, which is to recognize that it is an unhappy situation, but as I have argued, less unhappy than I suggest will be the situation when open-ended criteria become the mandate for this kind of power.

You can try to redefine what you want to target in a much more precise way than you have. That is another way to go. Then often we have to face at the end of the day which risks you are prepared to incur in a society like ours, the risk of locking up the wrong people or the risk of not locking up the right people, remembering all the time that once we are talking about an urgent situation, the power is there at the moment to act.

Incidentally, on community treatment orders, our position is that they are dependent on the acceptability of the



criteria for coercion. If you have acceptable criteria for coercion, community treatment orders could then be a more viable option.

1600

**Ms Frances Lankin (Beaches-East York):** Thank you very much, Mr Borovoy. I appreciate your presentation and I think your clarification with respect to community treatment orders is also extremely helpful. I think some of the disquiet people have felt with respect to that section of the act actually does stem back to the broadening of involuntary committal powers. I find myself in such agreement with what you have said, but I think it might be motivated by ideological and values preferences and I'm cautioned by your earlier comments that that may not be an appropriate—

**Mr Borovoy:** Well, as long as this is between two people on a voluntary basis, it's fine.

**Ms Lankin:** That's true, it's OK. I think you should know that the committee has had some discussion with previous presenters about the possibility of attempting to clinically narrow the application of the legislation. I think we don't know exactly how to do that, and there's debate, but it is an active issue on the table and you may want to comment on that.

One of the things we have heard so clearly from the family members of people with mental illness, particularly of those suffering from schizophrenia, the most common group that has come forward, is how difficult it has been to deal with the existing law, the barriers they have felt the law has presented them, and how it has prevented them from getting the help they need. We've heard from others that the law itself isn't the problem; it's how it has been interpreted and implemented out there. But that's the imperfect science of law-making and interpretation. I worry that the new law in its complexity will equally have problems of a potentially pendulum-swing nature in its interpretation.

One of the other broadening provisions you didn't talk about is the power of the police to convey someone for psychiatric assessment, the change that they no longer have to observe the behaviour but have to have reasonable and probable grounds, which is a fairly well-established legal test.

The other things you've addressed around imminence and removal of the more vague terminology of mental and physical impairment: I wonder if you could address that police provision. What many family members have told us is that, time and time again, when they do access the police and get the police to come and intervene, the behaviour has ceased by the time the police officers intervened, and the whole intent of these changes is to try and ensure that the person has a right of treatment as well, that they can get the treatment when they're not in a position to make that decision for themselves.

**Mr Borovoy:** Then I take it, for those purposes, you would be talking about a person who poses a much more imminent peril, if I can use that term without begging any questions. You're talking about the kind of situation

where the person would fall within today's criteria, the criteria in the current act.

**Ms Lankin:** Maybe someone who on an ongoing basis is significantly threatening bodily harm to themselves or someone else, but when the police officer, the figure of authority, is on the scene, they cease that activity, only to resume it again when the person leaves.

**Mr Borovoy:** I noticed that, and I guess my reaction to it was, "Is this really necessary?" If the family has seen this person behave that way, could not one member of the family then go before a justice and swear and provide the sworn testimony that would be needed under the existing act? In other words, they are the ones who've had the experience. As a safeguard against abuse, shouldn't a society like ours insist that those who have seen it put themselves on the line and swear to it? That's one of the ways we try to protect against abuse in our society. It's hard to imagine a situation so dangerous that either that couldn't be done, or when the police officer comes on the scene, the person isn't behaving in such a disorderly fashion that the officer could act in any event.

**The Chair:** Thank you. We are out of time. Mr Clark, do you have a very quick question or comment?

**Mr Brad Clark (Stoney Creek):** Just a quick question.

**Mr Borovoy:** It may not be a quick answer, though.

**Mr Clark:** I've noticed. The legislation itself: Did you have an opportunity to thoroughly review the proposed legislation?

**Mr Borovoy:** To thoroughly review—

**Mr Clark:** To thoroughly review the proposed legislation.

**Mr Borovoy:** I've not thoroughly reviewed it in its entirety, no. What we have done is focused on a couple of these things that were issues we have been very much involved in over the years.

**The Chair:** Thank you very much, Mr Borovoy, for coming before us. We appreciate your comments.

## NO FORCE COALITION

**The Chair:** Our next group is the No Force Coalition. Could they come forward to the witness table, please. Good afternoon and welcome to the committee.

**Mr Erick Fabris:** Am I to speak now?

**The Chair:** Yes.

**Mr Fabris:** Are other people going to be here or—

**The Chair:** I think you'll find members wandering in and wandering out throughout the afternoon.

**Mr Fabris:** I'm quite happy to be here and to be able to present to you. I'm interested in essentially re-informing anyone here who has seen the No Force Coalition's statements in the past as to what we stand for and what our position is on community treatment orders. You've got some of the handouts. I believe there are more coming your way very shortly.

What we aim to do as an organization or a coalition is to educate our community and to ensure that information that isn't readily available through other journals or other



areas is brought forward to people, including the professionals and family members, who I know you've heard from, some of whom are opposed to the present legislation and some of whom are not.

I'm going to start by simply reading some aspects or some parts of this presentation, starting with the award that was mailed to members of Parliament some two months ago. It is an award, in all seriousness, given to those who would vote against community treatment orders. It says:

"To Ontario MPPs who stand for human rights.

"The No Force Coalition offers this award to those who will vote against community treatment orders, which will be included in the Patients' Bill of Rights," as we then believed it would be called.

"We urge you to consider compassion and to respect the dignity of all your constituents. By forcing involuntary treatment on people struggling to survive in the community, people who are not a danger to themselves or to others as understood in the Ontario Mental Health Act, community treatment orders would strike a deadly blow to our community, and would destroy basic human rights of freedom and choice. They would cause unnecessary hardship, and disgrace a mental health care system still in need of long-awaited reforms, especially the implementation of less expensive supports and businesses controlled by psychiatric survivors, which are proven alternatives, long considered necessary and beneficial to the emotional and physical well-being of people in need or in distress. Psychiatric survivors are wrongly considered dangerous and undesirable, yet we are a people most strongly committed to the betterment of our community, and a group best able to understand the impact of coercive treatment on us, on our families, and on all Ontarians."

It then lists a growing list of worldwide organizations, some of which are actual coalitions themselves, some of which are organizations, funded and non-funded, in Ontario, in Canada, in the United States, in the UK and abroad. They are all organizations that have endorsed the coalition's stand against CTOs. These organizations are not a part of the No Force Coalition. The coalition itself is made up of about 25 groups and individuals. These organizations have come on board. I'd like to read that list a little later.

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I forgot to mention my name is Erick Fabris. I am a member of the coalition and I was asked to represent us here.

I just draw your attention now to the open letter to members of Ontario's provincial Parliament dated April 20, 2000. Again, the coalition was sending in information and mailings that we thought would be of interest to MPPs long before the present government actually tried to put a bill together. We started just after Bill 78, which was put forward by MPP Patten. Since then we've been working on this. So some of this is going to be a little out of date. It's no longer called the Patients' Bill of Rights, for example. This letter reads:

"Thousands of Ontarians strongly oppose wasting tax revenues and emergency services on 'community treatment orders.' While the Ministry of Health promises a full continuum of voluntary supports in its policy document, 'Making It Happen,' it singularly works to impose forced treatment in the community. This exhaustive reliance on coercion in the guise of preventive care will fail people in crisis and drive them underground. CTOs, as they are being proposed, will offer patients a ticket off the ward in exchange for their basic rights, choices and freedoms, and the cost of this will be overwhelming in both financial and human terms. A broad base of citizens has repeatedly decried CTOs in consultations, in petitions"—we have a petition here that lists some 322 people; for our community that's a pretty good showing—"and in letters! It's time provincial legislators joined their constituents in saying no to CTOs—let's put health care money where it belongs and is needed most!

"Minister of Health Elizabeth Witmer boasts that Ontario has already spent \$150 million to prepare for restrictive changes to legislation. According to the ministry, a single 'assertive community treatment team' costs \$1 million to run, yet serves just 22 clients! There are examples of teams that have been on payroll for months without engaging any clients. Ms Witmer may keep two or three special interest groups happy with such fast spending, but not taxpayers! One such lobby, the 'Schizophrenia Society,' holds marches and fundraisers for pharmaceuticals and counsels families to lie to police to get a family member committed." Incidentally, some of their funding does come from pharmaceuticals.

"Police should not have to spend additional hours in admitting rooms to resolve family disputes by forcing someone to take harmful drugs. Only a handful of psychiatrists (ie the so-called 'Coalition of Ontario Psychiatrists')"—newly formed—"want the laws changed. The present Mental Health Act satisfies the" vast "majority, saying people who appear to be a danger (or an 'imminent threat') to self or others can be locked up and treated against their will. The act even has a 'leave agreement' (Sec 27) that works very much like a CTO. So why is Ontario shelling out millions to keep fans of well-endowed pharmaceuticals happy, especially when these groups don't have the facts about the issue?"

"The No Force Coalition has enclosed some of these facts in pamphlet form"—again as part of our educational campaign—"and asks that you refer to your constituents' objections to CTOs for further insight. You may have already heard the principal arguments: 'Mental illness' does not lead to violence according to decades of research; force doesn't promote health and is avoided by better health practitioners; medications don't work for most people and they often have dangerous effects; cost-effective services that properly assist people in great need or in crisis need recognition and funding—the widely popular service 'Sound Times,' for example, operates on \$1 per day per visit," by its membership of 450 and including salaries and rent.



It's a peer organization run by peers. It's well respected in the community, both by professionals and by its peers. They deal with some of the hard work of finding housing, of finding people activities. You won't find that in most of the clinical services.

"Sixty-eight groups in Ontario and beyond have endorsed our stand against CTOs, some of them representing hundreds of member organizations, including family groups, service providers and especially psychiatric survivors themselves! They believe CTOs will violate historically protected human rights and will be resisted or ignored. Ask again if your constituents want to pay millions to keep a handful of people from refusing problematical treatments.

"We ask you to speak out and vote against the CTO bill when it's introduced in the Legislature, which may be as soon as this month.

"Thank you."

I won't read through the entire list of organizations that are opposed but I want to bring some to your attention. Let's just go through this: ACHES-MC hails from Thunder Bay; All Saints Church-Community Centre is here in Toronto; Alternatives I believe has already presented to you; ARROW is a local organization as well; A-Way Express Couriers is one of the peer businesses that were mentioned;

Bazon Center for Mental Health Law you've heard from, in Washington; CKLN Radio is of course a local radio station; Campbell River and North Island Transition Society in BC; Canadian Association of Elizabeth Fry Societies are also interested in this legislation; the Chatham-Kent Consumer/Survivor Network is a peer organization there; the Clarke Consumer Advocacy Group is something similar to the Patients Council at Queen Street; Community Resource Consultants of Toronto, of course, is a larger professional organization here Toronto; Consumer/Survivor Network of Haliburton, Northumberland, Peterborough & Victoria is a recently established group; the Depressive and Manic Depressive Mutual Support Group in the Ottawa-Carleton Region.

Again, some of these groups are not the usual groups that you would expect to oppose this legislation. Many believe in the medical model.

DisAbleD Women's Network of Canada is also very interested in this legislation; Distress Awareness Training Agency in the UK—I believe they're an alternative type of group; Edmond Yu Safe House Committee, which of course you've heard about since the inquest; Family Mental Health Action Group, one of the family member groups that is against the CTO legislation; Family Mental Health Alliance; Family Outreach and Response Program. All of these are in Toronto.

FibreMoon Studios is down in the Niagara region; Fresh Start Cleaning and Maintenance, another local peer business; Friendly Spike Theatre Troupe is a local peer-driven theatre group; the Gerstein Crisis Centre, of course is renowned for alternative work in this area; the Global Sisterhood Network;

Irren-Offensive from Germany; Kitchener-Waterloo Sexual Assault Support Centre—again many women's groups are also interested in this legislation; Krasman Centre; Labyrinth Group from St Catharines; MadNation is a clearing house of information and they're easy to find on the Internet; Mental Health Legal Committee, whom you've heard from; Mood Disorders Association of Ontario and Toronto; My Friend's Place is a local organization;

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The National Association for Rights Protection and Advocacy in the US; Ottawa Rape Crisis Centre; Ontario Coalition Against Poverty, of course; Ontario Council of Alternative Businesses; Ontario Federation of Community Mental Health and Addiction Programs, which includes 220 agencies; Open City Productions 2002, another art-related group; Parkdale Activity and Recreation Centre, a local alternative centre; Parkdale Community Legal Service; People Against Coercive Treatment; Phoenix Survivors Perth County; Psychiatric Survivors of Ottawa; Psychiatric Survivor Pride Day Committee; Queen Street Patients Council; Rosewood Shelter; Women's Resources of Simcoe;

Saskatoon Sexual Assault and Information Centre; Saskatchewan Action Committee on the Status of Women; Saskatchewan Battered Women's Advocacy Network; Sexual Assault Services of Saskatchewan; Sound Time Support Services, mentioned in the letter; Speak Up Somerset is a peer-controlled initiative in the UK; Still-room Collective Street Health; Sudbury Sexual Assault Crisis Centre; Support Coalition International, which includes 80 organizations in 11 countries, also a clearing house of information on this matter, or in these areas; Survivors Psychiatric Advocacy Network, which is in Lindsay, Ontario;

Toronto Women's Health Network, which includes 100 and more agencies and individuals; UnrulyWomen is another Internet group; West Virginia Mental Health Consumer's Association in the US; Women's Counseling, Referral and Education Centre here in Toronto; York Anti-Oppression Coalition, York University; York University Graduate Students Association; York Women's Centre at York University.

Would it be fair to describe the opposition to community treatment orders in principle and certainly Bill 68 as quite far-ranging? Both families and providers have enlisted and have spoken out. Let's have a look at some of their quotes here:

Tunde Szathmary says, "The concept of community treatment orders in my situation means that you're denigrating my spouse, my marriage, by saying these are not people with their own rights. They can be well enough to make their own decisions. CTOs are just not acceptable because they assume a person will never become well enough. CTOs are institutionalization in the community."

Lana Lam Chau says, "Why force people on medications instead of helping them in their homes? Where is the happiness in depending on chemicals? It feels like a



contradiction. A dependency on medication is being created."

Ganesh Pon says, "Anyone who is resistant to medication is going to be aggravated by forced medication. My son has not improved by being on medication. Forcing the medical model is tunnel vision."

Danuta Zbromsky says, "Medication has helped our family. He functions much better. However, we are aware there is no cure so we make the best of the time we have. He has been able to work part-time. But I am concerned about the violation of his rights. Let's try other alternatives first."

Pat Oldaker says, "Education about the existing laws is what is necessary"—I know that this government has done some of that work—"I can't imagine ever using a CTO on my daughter."

Hella von Delm says, "I believe we already have enough laws to take care of patients in crisis, but we cannot allow all patients to be forced to give up their rights of self-determination. This is taking away all hope for a future as a well person. There have been successes in treating schizophrenia without medication for life, or even many years."

Service providers obviously are also on side with the No Force Coalition.

We have Dr Bonnie Burstow saying, "As an Ontario psychotherapist, I am appalled by the government's intention to bring in community treatment orders—a measure appropriately known in the psychiatric survivor community as 'leash laws.' Community treatment orders are about control and tyranny, not help, and they violate freedom and decency. They threaten the well-being of all Ontario citizens who have ever come in contact with the psychiatric system or who ever may."

Cathy Crowe, whom you may know as a community health nurse, is the coordinator of the Toronto Disaster Relief Committee. She says: "I've been a community health nurse for 20 years, for the last 12 as a street nurse, working with people who are homeless. I know I will never ever use CTOs. The Mental Health Act functions adequately to protect people who become very ill. Yet it is no substitute for the care and support some people need on an ongoing basis and that includes competent and caring community-based mental health care, decent housing, mental and emotional health supports and enough money to live on. These are the building blocks for dignity for people with mental health problems. Forced treatments, via CTOs, will simply strip people of the last vestiges of choice in the health care system. It makes me think of bad medical experimentation on people. It also makes me think of what happened in early Fascist Germany," which is not just a metaphor, by the way.

Continuing on the next page, Cheryl Rowe, an MD, FRCP and a community psychiatrist and assistant professor at the University of Toronto, says: "CTOs are unnecessary and have the potential to violate human rights and damage the doctor-patient relationship. We have other laws to protect an individual and society. We

need help in building relationships with patients and creating mutual understanding and respect so that people can make good choices for themselves and their treatment."

You may have been interested in this person's credentials. Some of the individuals who signed up have credentials that are just as impressive.

Another person who speaks out against CTOs is Victor Willis, the executive director of the Parkdale Activity and Recreation Center: "When an ill-conceived law is put into place we must oppose it or we give up our rights when further bad legislation is created. The proposed change to the Mental Health Act, specifically community treatment orders, is an example of an ill-conceived law. Quality of life does not come from a needle or a pill. It comes from homes, jobs and friends. As someone who grew up with a parent who had a diagnosis of a major mental illness, I am appalled."

Maurice Adongo, a street outreach worker with Street Health, says: "According to the government, the CTOs will help provide treatment for people in the community, but they should ask themselves one question, 'For a homeless person, where is that community going to be?' In the parks? Or under the bridges? How are we going to force medication on people who do not even have a place to store the pills? CTOs are nothing but a cruel joke for the homeless people who are battling mental health problems. I'll be glad for the day when our government wakes up and starts dealing with real-life issues like providing dignified housing as a starting point to help people put their lives back together. How many times do we have to continue repeating these obvious things?"

Trish Spindel, a professor of social services at Humber College, says: "CTOs are nothing more than the use of coercion by those with power against a vulnerable population which is unable to defend itself. Coercion has never improved anyone's quality of life, nor is its use effective in preventing harm," which of course is backed up by studies the Bazelon Center has presented. "CTOs will result in the 'relaxing' of innocent people's due process rights, further expansion of both biomedical and police powers, and they will not produce the 'results' which the government is trumpeting. If government was to put half as much energy into supporting people through decent housing, a wide range of community support options, and a guaranteed annual income, as it is putting into trampling on people's rights in the name of helping them, we would be a long way down the road to building a decent society in which people who have been labeled would feel more secure and less threatened."

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Barbara Cadotte, a systemic policy adviser at the Psychiatric Patient Advocate Office, says: "Our current legislation has developed over many years, through consultation to improve the delivery of mental health care and the incorporation of legal safeguards to protect the rights guaranteed under the Canadian Charter of Rights and Freedoms. The proposed measures to permit community treatment orders will not ensure people will



have access to the best treatments available, including access to the best medication with the fewest side effects, nor will it provide early intervention by knowledgeable health care workers. Further, using resources to forcibly treat individuals (or to track down people who choose not accept the prescribed treatment) diverts attention from the need to ensure a better continuity of mental health care, and access to a range of resources for those who require them."

Lynne Raskin, executive director of Alternatives, says: "Living in the community gives us the right to make decisions about our own lives. All of us have both rights and responsibilities as citizens and there are laws to ensure that criminal transgressions are duly addressed. But when a society begins passing laws that infringe on the civil rights of a distinct group, we violate ethical codes, human rights and we chip away at the moral fabric of that society. Community treatment orders do just that: Orwellian laws for a group of citizens who will be left with fewer rights than the rest of society. Undoubtedly, this will result in fewer people wanting to seek help from a system that blatantly espouses disrespect and disempowerment and fewer people wanting to work in a system that turns support into whistle-blowing and paternalism."

I'm a psychiatric survivor myself. I just wanted to show you some suggestions that were worked out at a meeting approximately two years ago, or was it one? It was a long time ago; it feels like two.

I'm going to talk about some alternatives to some of the force that is being promoted in this legislation. These things won't be forced in Bill 68. You wouldn't imagine psychotherapy being forced upon you, you wouldn't imagine affordable and safe housing being forced upon you—I wish that were—you wouldn't imagine peer support programs, consumer-survivor-run services and initiatives being forced, but these are some of the alternatives we need to look to in order to ensure that the money we put into mental health actually starts to work for people.

A wider range of choices in treatment and therapy should include non-coerced services; real employment, such as peer-run businesses; a parliamentary review of the costs and aftermath of this bill, of CTOs in Ontario, should be done; protections and accommodation in the workplace; enhanced independent legal protections against institutional abuse; a response to child abuse, to child assault and emotional trauma; a response to women abuse—rape, battery and emotional abuse; more support programs such as social and recreational—

**The Chair:** Excuse me. I just wanted to put you on notice that you've got about one minute left in your presentation.

**Mr Fabris:** OK. I'll just open the floor for questions if I have the time.

**The Chair:** Sorry, we wouldn't have the time to do the rotation; if you want to just finish off with concluding comments. We could hardly state our names in 60 seconds, never mind pose a good question.

**Mr Fabris:** I guess you can read the rest of these alternatives. There's not much to say at this late date. We've presented the information to you numerous times. I just hope you've received. I hope you can read it now if you haven't looked at it already. Please consider the pamphlets not as trinkets but as distillations of much more serious research that you will find, given that they quote where that research comes from.

Given our presentation, not as the mental patients presenting, ask yourselves whether or not the suffering of some family members is equal to the suffering of some mental patients. Ask yourselves whether there is inequality in the service between those who are not given treatment and those who are given treatment but it harms them. Ask yourselves if this bill is simply expanding criteria to give the public a sense of safety when the present act gives them that safety, according to Michael Bay. That's all I'd like to say today.

**The Chair:** Thank you very much, Mr Fabris. We appreciate your taking the time to bring your perspective before us here today.

**Mrs McLeod:** I'll apologize if the committee has already asked for this. I'm wondering if it's possible to get a clear statement about the status of electroshock treatment in Ontario's psychiatric hospitals.

**The Chair:** I don't know whether it's fair to ask Mr Clark. Is that what the researcher has just—no.

**Mrs McLeod:** One of the pamphlets was on electroshock treatment. I think, as we talk about the issue of any kind of involuntary treatment, that's one of the issues we should be concerned about.

**The Chair:** We'll ask research to bring you back a definitive answer.

**Mrs McLeod:** I appreciate that. Thank you.

**Ms Lankin:** As long as we're on research matters, I wanted to follow up on a request I made. The days are all blurry at this point, but I think it may have been at the subcommittee meeting prior to the beginning of hearings, where I had asked for a summary of the Mental Health Act and amendments and changes, the pre-1978 and post-1978 regime. I'm wondering if anyone recalls that I had asked for that and if work is underway.

**Ms Lorraine Luski:** Work is underway.

## FAMILY MENTAL HEALTH ALLIANCE

**The Chair:** Perhaps we could call forward the next group, the Family Mental Health Alliance. Good afternoon. Welcome to the committee.

**Ms Tunde Szathmary:** I don't know how much I will have to say, but I'll try and leave some time for questions. I'm sorry that I didn't get our brief done in time so that we could actually distribute copies, but hopefully by the end of the week I'll have it finished and to you.

My name is Tunde Szathmary. I'm the coordinator of the Family Mental Health Alliance.

The Family Mental Health Alliance is an umbrella organization of family self-help groups, agency and/or hospital family support programs and individual family



caregivers in Metro Toronto. The alliance began as a networking effort in 1995 to enhance the capacity of family self-help organizations to help families and friends cope with mental illness and mental health problems in their immediate circle. The opportunity of coming together also opened the way to amplifying the voice of families and informal caregivers in mental health planning and formal system design. Through the sharing of information and the articulation of the family perspective on a variety of issues, the steering committee of six group or program representatives and six individual family members reaches out to 11 other local family groups as well as government and other stakeholders in the mental health system.

Our interest in CTOs began about two years ago, when we realized what a divisive issue it would be for the family sector. Up until that time we felt that families had made significant inroads through mental health reform. In the past, the relationship among stakeholders, particularly towards families, was very adversarial, and we saw the beginnings of a new partnership where the dire straits of families were sometimes raised not only by family members but by consumer-survivors and service providers who were open enough to hear what we had to say and carry our concerns forward with the same legitimacy that they carried their own concerns forward.

We started our approach to CTOs, therefore, by trying to inform our community of families what it was about and trying to present all points of view. We basically produced a paper, called Community Treatment Orders: Solution or Symptom, in which we looked at the attitudes the consumer-survivors might have about it, and some family members, that CTOs make community tenure look like a lifetime probation, that treatment recommendations look like parole restrictions or bail conditions, that hospitalization feels like punishment for disobedience or jail for the crime of illness and deterioration.

We wondered what this would do to our relatives and what it would mean for us. We were concerned about enforcement and whether the responsibility would twist the therapeutic relationship into something that wasn't therapeutic. We wondered if the responsibility ultimately wouldn't devolve to families, the way so much of everything else has. We were concerned about breaches in civil rights and in human rights. For caring family members, there's a real horror of seeing their family member as totally discredited and discounted.

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We asked why our relatives and other people become non-compliant with medication and we looked at that issue, because the implicit assumption in CTOs is that repeated hospitalization or relapse is caused by treatment non-compliance. We came up with a number of answers. I won't go reading all of them now, but essentially the answers are not much different than the reasons for non-compliance among seniors, 50% of whom also don't comply, and other people in the community who are dealing with heart disease or other illnesses. We wonder why, then, this applies only to our consumer-survivor

relatives and other consumers-survivors in the community.

We concluded, after our evaluation, that treatment non-compliance was multifaceted and required an appropriate response in every case. A one-size-fits-all CTO would be a disservice to our relatives. It could even be dangerous because of the possibilities that come with CTOs. There are very severe adverse side effects: tardive dyskinesia, neuroleptic malignant syndrome and other kinds of morbid and mortal risks. The system sometimes enhances racism, and CTOs could lock in a person very inappropriately. There is an increased stereotyping of people with mental illness as dangerous, ignorant or inherently uncooperative in some of the criteria that have been put forth for CTOs. We're afraid CTOs would increase the stigma for help-seeking, and there's always the increased potential for abuse. As much as I like to defend families, there are always problems and there obviously have been incidents where families have abused relatives, as have other caregivers, and we feel that kind of risk needs to be taken very seriously.

The potential for CTO to be seen as an entitlement for service that could force service provision, or a service order, in other words, could barely balance the risks, in our estimation. Everything would lie in how the CTO provisions were laid out. We felt that with the inadequacy of system resources now, CTO would merely cover system failure and do violence to vulnerable individuals who are already vilified in our society for their mental health problems.

Bill 68, Brian's Law, basically has said it heard from families. The FMHA and the families it has talked to are not in support of CTOs. We have grave concerns about forced treatment, not only because of some of the elements that I mentioned above, but because of the nature of treatment which usually devolves to drugs. Please don't misunderstand us on this. Families by and large are in favour of medication. However, we see that the revolving door of repeated psychiatric hospitalization is due as much to the failure of medication as it is to the induction of relapse by stress from poverty, idleness, loneliness and insecure futures in housing and treatment services. Medication non-compliance is just one part of it. We believe that the benefits of medication are and can be made self-evident with appropriate community supports rather than CTOs.

In *The Psychotic Patient: Medication and Psychotherapy*, 1985, Collier Macmillan, Dr David Greenfeld notes that consent can be obtained with patience, sensitivity to the client's own dissatisfaction with the experience of psychosis, and honesty about alternatives. Success requires an intensification of time and effort, which are much more benign to the client than force. More recently, Healey et al described the use of a new psychological intervention called compliance therapy, which was more effective and cost-efficient than the usual counselling. These items are referenced in my paper. Non-compliance with medication, which is the implicit issue in the hospitalization criteria of Bill 68, can



be better handled without legislation which places people at risk.

There is an underlying assumption in CTOs for medication, that medication is always beneficial and that errors in treatment are benign. At this time I would like you to think about Ewan Fastofsky. Gabriella, his mother, is in the audience today. She survives her only son, who died at age 38 this past January 5. Gabriella has told us that Ewan died of thromboembolism. She had been concerned about his deteriorating condition since last October and her appeals to his doctor were largely ignored. In grief, she went to the Metro reference library to investigate why her son died. In a volume on pharmaceutical and specialty drugs, she discovered that Clozapine, the miracle drug we have all heard about, came out in the 1960s and was banned in Sweden because of a link to thromboembolism. It was only last week that I downloaded an article from the Internet which reports that a Swedish study on thromboembolism was published in the *Lancet* this April 1. Gabriella asks you to enforce the laws on informed consent for people who will ultimately bear the risks of the range of adverse effects which accompany any serious psychiatric medication. Her son should have had a chance to say no without the backdrop of CTOs if he did.

The FMHA would ask you also to ensure that substitute decision-makers who step in for their relatives when they are incapable of consent be similarly fully informed and free from pressure. We would like the decision of a substitute to err on the side of caution to be respected in the treatment centre. Lana Lam Chau, who is also in the audience today, is a mother who lost her right and her son's right to have her make decisions for him because she disagreed with his doctor's advice. Her son, Thai, 37, is called uncooperative, but Lana tells us that he is scared of the staff involved in his care. He has not stabilized with the treatment imposed and Lana fears he never will while it continues without his or her input. The system does not appreciate that ethnoracial derivation may make the usual script of treatment inappropriate. Lana asks you to ensure that a substitute's authority to follow prior wishes or assess new ones according to the substitute's knowledge of the values and the beliefs of his or her relative will not be challenged. Most specifically, ethnocultural and ethnoracial factors need to be accommodated. The Family Mental Health Alliance agrees. Bill 68, however, introduces several amendments which would allow strangers to intervene.

The FMHA believes that overriding a substitute decision-maker is in most cases fundamentally wrong. It is also concerned that Bill 68 amendments could be used to force an unwilling substitute to consent to CTOs or risk losing any formal place in the protection of a relative's interests. You may point out to me that the system is there for our relatives. It didn't work in the case of Regis Belmar.

Mary Belmar is here today as well and wants me to tell you about what happened to her son, Reggie, 39, who died last July 14 through a series of misadventures in the

mental health and the health care systems. His death was the culmination of a woefully inadequate response to a medical condition, compromised by physical restraints that were placed on him when he got upset over being transported to hospital by a community worker who offered to take him for a ride. Reggie had not been in hospital for eight years and didn't like it because of an untreated infection he had suffered there years before. He was doing all right except for weight gain, which led him to go off his meds. In trust, he told a community worker, and ended up subdued, involuntarily hospitalized and vulnerable. Mary would ask you to reconsider the issue of betrayal that's inherent in CTO enforcement. It can backfire tragically.

These women and countless others have experienced a variety of traumas in the mental health care system and they fear, quite reasonably, we believe, that CTOs may be a way that the system can avoid looking at itself for faults. It is in the nature of families, as it is in the self-help and mutual aid groups which gave rise to the FMHA, to be concerned about systems issues like quality of care.

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The FMHA believes that it would be complicit in an unknown and as yet unknowable level of suffering if it did not reiterate its message of caution about CTOs. The mental health system needs to be resourced adequately first so that it is able to provide the time and the expertise to individualize treatments and supports. If, after all the alternatives are tried, a rare individual may need something like a CTO, we'd all have a better idea of who needs it and why. Fine-tuning legislation may then work, as Bill 68 does not.

There are a number of issues that we found in Bill 68 and these are the parts that I didn't quite manage to get typed up. Essentially, some of them have to do with the mishmash of criteria for getting someone in for an assessment. One of the elements that we were concerned about was the criteria for finding previous treatment for a disorder with a likelihood of harm. We don't believe we've ever seen any research that indicates that there is a disorder likely to cause harm. That is not one of the classic signs and symptoms. Basically, that kind of criteria is unworkable.

We also had trouble with the criteria that talks about having shown previous improvement to treatment. There is research certainly in the mood disorders field, which is my family experience and where I come from, that interrupted treatment very often means that the treatment that was effective previously is no longer effective. You cannot assume just because someone has had a particular kind of illness at one point and has had a particular kind of treatment at one point that it will be effective again, and the criteria really rest on that.

The same kinds of things actually come up in the CTO criteria. We found a couple of other problems there. We were concerned that part of the criteria had to do with hospitalization: accumulative, 30 days, or in-patient two or more times in three years. This suggests that hospital-



ization is a sign of failure. Sometimes hospitalization is a sign of success. People who need help would be wise to go to hospital, especially if they're suicidal or homicidal. Sometimes people have breakthroughs for no reason whatsoever to do with treatment. I mentioned earlier the issue of stress. I could relate one very stressful incident from my own family this past January. My father-in-law was dying and my 85-year-old mother-in-law asked my husband to look after his father overnight because she needed rest. They could not get home care. I urged him not to do it because of the risks but he did it and within three days he was manic, after five years of being somewhat level. He ended up spending a week in hospital. He did not do anything that would justify having his hospitalization held against him, so I have concerns about that kind of statement in criteria.

We were concerned also that the nature of the plan was not clearly defined as to what could be included and what couldn't. Could, for example, part of the plan deny people access to their friends in the consumer-survivor community? In the past, very often staff in hospital would not allow a consumer-survivor to come back and visit friends once they were discharged. A lot of service providers and family members are sometimes suspicious of the consumer-survivor movement because they're afraid that it will convince them either that the families are to blame or that treatments don't work and it would make them non-compliant. We wonder what kind of restrictions can be included, since none is specifically excluded.

**The Chair:** Excuse me, Ms Szathmary. We're at the end of the 20 minutes but I'd like to allow you another minute or so if you've got any concluding comments.

**Ms Szathmary:** One last conclusion and this would, I think, be most addressed to Mr Patten.

We found that the same elements that were in his proposed amendments a year or two ago when a person did not comply with CTO or the release conditions held. That specifically was that the person would be notified that they had abrogated the agreement and a whole set of conditions or steps would follow in which they would be notified and they would be offered assistance to help in compliance etc. What concerns us is that one of the elements there is, if a person is dangerous to himself or others, those kinds of steps ultimately will delay very necessary treatment. There are a number of little points like that that we would like to make in our final submission.

**The Chair:** Thank you very much. We appreciate you and the members of your association coming down before us. We know how difficult it is to share those stories with us, but we truly appreciate your taking the time to come down and be part of the hearings on the bill.

#### RUTH MALLOY

**The Chair:** Our next presentation is from Ms Ruth Malloy. Could Ms Malloy come forward. Good afternoon. We have 10 minutes for your presentation.

**Ms Ruth Malloy:** I can tell you about myself. There are three things I really like doing a whole lot. One is making trouble, one is talking about my kids and the other one is answering questions.

**The Chair:** You'll have trouble deciding between number 2 and number 3 then in the time that you have.

**Ms Malloy:** If I don't get questions, I'm going to start making trouble and talking about my kids.

**The Chair:** Please proceed.

**Ms Malloy:** I may begin. I worked really hard on this. It doesn't answer all the questions, but it says some of the things that are in my heart.

My views on schizophrenia have evolved over the past 20 years through living and working with people with schizophrenia, formal study, reading books and journals and attendance at conferences and public forums, augmented by daily contact with three wonderful children who suffer from schizophrenia.

From where I sit it looks as if CTOs and the abandonment of the dangerousness criterion for involuntary treatment would help people with schizophrenia to enjoy more freedom and to live consistently fuller, more productive lives in less restrictive community environments. What I don't understand is, why have you waited so long to do this?

Please let me emphasize that it is not the intent of the proposed amendments to take away any of the genuine rights and freedoms presently enjoyed by the mentally ill. The target population for CTOs would be that small proportion of the mentally ill who lack insight into their mental state, have a history of robust response to medication, repeated readmissions to hospital and a chronic history of treatment non-compliance. Others have no reason to fear loss of autonomy.

Rigorous scientific investigation suggests that schizophrenia is a brain disease. The schizophrenia syndrome originates from neurochemical overactivity in the part of the brain where raw incoming sensory stimuli are sorted and formulated into thoughts and perceptions. The symptoms typically include two or more of illogical thinking, social withdrawal and false perceptions, such as hearing voices, and false beliefs that seem so totally real that it is impossible for another, no matter how eloquent their arguments, to reason them away. These symptoms respond well to traditional anti-psychotic medication, and the medications are safer than aspirin. My son swallowed 73 pills on one of his three suicide attempts.

In addition to the florid symptoms, there is a broad spectrum of treatment-resistant deficits, such as impaired memory and concentration, loss of abstract and analytic thinking, loss of self esteem and feelings of persecution which are masked by more florid symptoms during acute episodes. I'm going fast so I'll have more time for questions.

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The deficit symptoms are frequently mistaken for medication side effects because they do not become apparent until after the medication has removed the more florid symptoms. New medications that help to relieve



some of the deficit symptoms, in addition to the more florid ones, have come on the market recently. My son and one of my daughters recently changed to Olanzapine. They both like the new drug. According to my son, the switch to non-traditional medication "gave me my life back."

In about a month they will experience the full benefit achievable on their present dose, and the physician will adjust the dose accordingly. My other daughter, who went on Clozapine in February, is finding that her voices are getting softer and less frequent and I am noticing that she is thinking more clearly.

I have to make a reference to the former speaker. There are an awful lot of people with schizophrenia who die from suicide. In fact, the rate is one in 10 and 40% try. So there's a death rate there that needs to be considered when you're looking at what happened to her son.

When anti-psychotic medication, the penicillin of schizophrenia, was developed in the mid 1950s, community care for people with schizophrenia became workable. On the other hand, it takes up to three months of continuous treatment to achieve maximal benefit, and ongoing prophylactic dosage is essential to achieve maximal blockage on the neurochemical overactivity. Deterioration inevitably takes place when an individual stops taking their medication.

Using CTOs to keep people living in the community on their medication would virtually eliminate rehospitalization due to medication noncompliance. In one early study in the United States, for example, 95% of people with schizophrenia readmitted to hospital were not taking medication at the time of their readmission. Moreover, compliance is frequently confounded by the individual's lack of insight into their own mental state. Approximately half the people with schizophrenia do lack insight into their mental state. Dogged insistence on voluntary consent to treatment does them a gross injustice. Without anti-psychotic medication, all the services and all the freedoms in the world are of no use. Sadly, a return to custodial care in large institutions would be the only compassionate alternative to medication.

My daughter once tried not taking medication. She eventually withdrew to her room where she fantasized herself to be held prisoner by aliens who were sending vibrations from outer space. She could have starved to death if she had been living alone. She was not ready to benefit from services again until after she had resumed pharmacotherapy.

A brief word now about the proposal to abandon the dangerousness criterion for involuntary hospitalization. I strongly support this proposal. Dangerousness is far too difficult, even for seasoned experts with years of experience, to assess accurately. Consequently, it is too awkward and clumsy a criterion to have realistic value. Furthermore, it permits many people who are afflicted with severe mental deterioration and desperately in need of compassionate intervention to slip through the cracks.

I once waited five months for my daughter to become sufficiently psychotic to be admitted to the Clarke.

Speaking again from where I sit, it looks as if a significant proportion of those homeless who have died on our streets, mentally ill persons shot by terrified policemen and bizarre slaughters of family members, likely involved people with untreated schizophrenia who would undoubtedly have benefited from CTOs. Furthermore, abandonment of the dangerousness criterion for involuntary treatment would reduce poverty, unemployment, marriage breakdown, child abuse and the need for psychiatric housing, in addition to diverting more people with schizophrenia away from the justice system.

**The Chair:** Thank you, Ms Malloy. You were able to use number 2 to great effect. You've left only a few seconds before the end of the 10-minute mark. If you had any other closing comments I think rather than try to play Solomon here—

**Ms Malloy:** I could comment on some of the things I've been listening to.

**The Chair:** If you can do that in a minute or so.

**Ms Malloy:** A lot of these things have really big holes in them as arguments. I remember one night my son had had a few beers. A person who has schizophrenia who is also a substance abuser can be very dangerous. That's enough about the dangerousness thing. We were just in absolute terror. He was burning himself with cigarette butts. He wasn't making very much sense. He was carrying a knife around the apartment. I ran for security. His two brothers, while I was talking to the police, both came down and asked them to hurry, and he went off like a little lamb. And you know, he didn't hold this against us, that we made him go in. It didn't destroy the therapeutic relationship. In fact, I have worked with people who will go and ask to be put in restraints because they know they have an episode coming on.

Any questions? OK, I'll go on talking about my kids.

**The Chair:** We've actually gone over the 10 minutes, but we very much appreciate your bringing your perspective to the committee hearings today. Thank you very much for taking the time.

#### ASSOCIATION OF GENERAL HOSPITAL PSYCHIATRIC SERVICES

**The Chair:** That takes us to our next presentation, from the Association of General Hospital Psychiatric Services. Could they come forward, please. Welcome to the committee. We have 20 minutes for your group presentation this afternoon. If you care to leave time for questions and answers, that's your prerogative.

**Ms June Hylands:** Thank you. I think we'll have time for questions. We certainly hope so.

I'm June Hylands, the executive director of the AGHPS. With me is Dr Turner, the president. We would like to thank the committee for the opportunity to be able to respond and give our perspective on the mental health amendments.



The Association of General Hospital Psychiatric Services has been in existence since the early 1980s. We represent about 50 general hospital and schedule 1 facilities. These are hospitals that are all over the province. Our board is comprised of about 20 members and is in a unique position in that it is made up of chiefs of psychiatry and directors of mental health programs, so it really gives a comprehensive perspective on the general hospitals' viewpoint.

We are responsible, as you know, for in-patient, out-patient, day surgery and emergency services, and therefore we represent the mental health providers who will be responsible for implementing the changes that occur as a result of these amendments. What we would like to focus on today is the implementation of these amendments.

**Dr Ty Turner:** My name is Ty Turner. I'm a psychiatrist. I'm the president of the Association of General Hospital Psychiatric Services. I'm also the chief of psychiatry at St Joseph's Health Centre in the Parkdale area of Toronto, one of the busiest hospitals in the province. Before that I was the chief at Doctors Hospital. I've been in the mental health system for over 35 years. Before I became a psychiatrist, I was the first provincial coordinator of the Psychiatric Patient Advocate Office, a program of the Ministry of Health.

I just want to amplify some of what June has said and then expand a bit further.

As general hospitals, having 24-hour, open-ended intakes called emergency departments and being empowered under the Mental Health Act, we are really it for the most part for this legislation. We're the ones who are going to be required to implement it. We have very significant concerns about the implementability of these proposed changes to the act.

In our setting, in hospitals, if a person is apprehended in the community by the police, conveyed to a hospital for psychiatric examination, detained and, if necessary, restrained and examined, this happens in our hospitals for the most part. If the person then is ill and meets the Mental Health Act criteria for commitment, it's generally to our hospitals. If somebody is really ill, ill enough to be on one of these proposed community treatment orders, it's very likely that the designated psychiatrist is going to be one of our staff, because often the community treatment order will start with a hospital admission.

I'd like to provide a bit of context about what's happening in the general hospital system. As I'm sure everybody here is aware, the mental health system has been very significantly downsized. There has been a policy geared towards reducing the number of beds in the mental health system in Ontario, from about 58 per 100,000 to about 35 per 100,000. In some parts of the province we're probably at or below that number at this time. Most of the bed reductions have come from or are expected to come from closing down provincial psychiatric hospital beds. Some, probably a small number, will come from further erosion of general hospital beds.

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In this downsized system, we have very significant problems in respect of general hospitals, for the most part within the context of mental health reform, not having achieved significant recognition for our role, and to some extent we have to accept responsibility. We haven't always had our act together. For the last few years, for the most part we've been dealing with hospital restructuring. Some of our hospitals have been closed, others have been amalgamated and this has preoccupied us. We're about ready to come out of that now and begin to offer perspective.

We also have very significant issues in respect of staff shortages. We're currently depleted by about 200 psychiatrists. These, for the most part, are the physicians who will be required to implement the Mental Health Act changes. We have shortages even in alleged overserviced areas. Let me tell you, I just came down from Timmins where they only have two psychiatrists. Covering 24-7 with two psychiatrists is pretty difficult. In Kenora they have two psychiatrists. In Sault Ste Marie they only have three psychiatrists. I think if we go across the province, we'll find these shortages are reasonably prevalent.

When we do find small numbers of psychiatrists, often we'll see that these psychiatrists tend, like myself, to be rather middle-aged and over the next 10 to 15 years will be coming up for retirement. The other day I was speaking to a chief of psychiatry at one hospital who was telling me about a five-person rotation covering 24-7. Four out of five psychiatrists are over 60. There have been significant problems attracting and retaining psychiatrists to work in general hospitals.

We've also had issues around dollars. I'm sure you know a lot about this. Basically our budgets have been protected but that means flatlined, and flatlined for the last four or five years. We've actually had some loss in terms of that aspect of the budget that helps to retain psychiatrists called sessional money. That was reduced by 25% back in 1993. With the current OMA agreement, that will be restored back to 1993 levels. This is before we had the major part of the bed reductions I've just referred to.

In respect of the specifics of the proposed legislation, I see two general areas. One is about community treatment orders, and I'm sure you've heard a great deal about that. The other part of the proposed changes will probably impact even more on our work.

In terms of the first, the community treatment order, I'm sure you've heard a lot of opinions on both sides. I can say that within the psychiatric profession there is some controversy about community treatment orders and their ability to truly function, their acceptability by psychiatrists, the degree to which they will be utilized, and also how effective they are in terms of not only protecting patients and their families but also protecting very scarce resources. I know the focus of these proposed changes is not about resources, but I think we need to have the kind of reality check that would be helpful in terms of knowing what the actual implementation of



these changes would look like. So we're not sure about the community treatment orders.

In terms of the other side of the proposed changes, having to do with loosening the commitment criteria and with enhancing or enabling police apprehensions, these are actually designed to bring more people into hospitals and cause more people to be kept. Ladies and gentlemen, quite frankly, as somebody who has been practising in hospitals and has practised in over 20 different hospitals over the last 25 to 30 years, I don't know how we're going to do it. I have no sense of how we're going to achieve the objectives of this act. I'm very concerned that the act, which was born out of noble and altruistic intentions, could become discredited through its unimplementability, if that's an English word.

It causes me to think about some other jurisdictions where legislation like this was passed, such as in Washington state in 1982 when commitment criteria were opened up and there were floods of patients coming into the hospitals and this created great disorder; or in Italy in 1978 with law 180, where there was a major deinstitutionalization, developed and passed by the Italian Parliament with no significant implementation plan. That law became discredited, not out of the intention behind the law but by major difficulties in implementation.

So we're very significantly concerned here, and as a result of that, flowing from that, our recommendation is very simple: that however legislators decide to deal with these proposed changes, whether to pass them or not, whether to amend them or not, the law not be proclaimed until we have an adequate implementation plan.

In Ontario we have a precedent for this. In 1978 the Honourable Dennis Timbrell led the passage of amendments to the Mental Health Act that we're currently seeking to reverse to some extent. There were two sections, 66 and 67, which had to do with mandatory notification of the legal aid plan and provisions for more due process at commitment hearings before the administrative tribunal. If I recall, these sections were not proclaimed until six years later. In the AGHPS, we're not necessarily recommending six years. We're just recommending that proclamation be delayed long enough to allow the stakeholders to come together with government and develop a suitable plan for implementation.

That pretty much completes my presentation. June, would you like to add to that?

**Ms Hylands:** Just to reinforce that, our association's position is that we conceptually support the amendments to the Mental Health Act. We feel it would be a tragedy if they were not implementable. We congratulate the government on the profile that's been given to mental health and the sincere effort, and we'd like very much to work with the government to ensure this is implemented in a way that is constructive and useful. We sincerely believe that the stakeholders within general hospitals and schedule 1 facilities need to be involved in forums and in a meaningful way to establish the mechanisms for doing that.

We thank you once again for your time and we welcome any questions.

**The Vice-Chair (Mrs Julia Munro):** Thank you very much. We have about three minutes per caucus for questions; I believe, in rotation, we're with the government members.

**Mr Clark:** During the consultations I had this last round, the issue of implementation and proclamation came up quite consistently. One of the concerns that was raised by a number of groups was similar to your position. Is it your position in essence that the entire bill should not be proclaimed until there are sufficient resources to allow for success? One of the concerns I raised during the consultations was that we can do all the legislative reform we want, but if we don't have the resources in the community to support the patients, it's going to fail. Would you care to comment on that?

**Dr Turner:** As an association, we would want to see the entire legislation reviewed in respect of implementability, though there are really these two broad areas. The area where we are most concerned about implementation has to do with loosened commitment criteria and with facilitated police apprehensions. They're the ones that are really going to strain the system even further. These are the ones where I would say the concerns about implementation are particularly grievous.

**Ms Hylands:** Also, I think our concerns around implementation are not exclusively around resources. Obviously that's a major concern and I know it comes up consistently. But we are concerned in areas regarding governance. Who will be a designated psychiatrist? There are many questions we don't have answers for that are not tied directly to resources, and that would certainly go a long way.

**Dr Turner:** There are issues such as, what if a psychiatrist doesn't want to participate in the legislation? There are concerns about psychiatrists' resistance to participation in respect of the Saskatchewan legislation, and we've heard about that in other jurisdictions.

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**Mr Patten:** Thank you for your presentation. I will read your questions in detail because I think we as well have been asking some of the questions you ask. They will certainly stimulate some suggestions for amendments.

I think your point about the resources is absolutely and totally fundamental to the whole backdrop of this. I, for one, have always said, "Don't consider implementing this if you're not prepared"—this government or any future government—"to back it up with additional resources." It requires additional resources and you talked about a couple of ways in which that would put pressure on it.

In terms of the community treatment agreement or plan, as I would call it—I don't like the term CTO actually. I think it's almost a punitive term and it comes from a court historical backdrop from the United States. I think it's a different context. It's actually from a court and it is an order. I think we're trying to get at a different



thing here, with a very small population of people, maximizing the consensual model.

Having said that, right in the criteria is the fact that there must be demonstrable evidence to show—by agreement. You can't put together a plan without having your community partners—agencies and professionals—who are part of the plan. They must be identified. So if there are not the resources there, they cannot move forward with that particular plan. I think it's a safeguard. I would welcome your reaction to that.

**Dr Turner:** That would be a safeguard. Actually, we'd like to see the same attention to safeguards on the other side of the act, to facilitate police apprehensions and the loosened commitment criteria. I guess what we're saying is that as general hospitals funded through the public purse, we see ourselves as instruments of social policy, of public policy. We just want to be shown how we can make public policy translate into an everyday reality.

**Ms Lankin:** I have two questions I'm going to try and get in. The first one: Addressing, Dr Turner, the comments you've made about resources, I've spoken to the heads of psychiatry of a number of general hospitals—I've put this on the record a few times already—who have, similar to what your association is saying, raised the concern about the loosening of involuntary committal criteria increasing the population who will be coming into the emergency room, whom your department will have to deal with.

I put that question to the OMA, asking whether they were concerned, for example, about the hospital restructuring commission's number-crunching exercises based on previous legislation, not these new criteria, and did we need to address the issues of facility-based and institution-based resources. Their response was essentially no, that CTOs are going to put people out the other side and this won't be a problem.

Further, I've been told that there are people currently—form 4 or form 3—who are not admitted because there aren't beds, not because they don't necessarily meet the criteria. Could you comment on that—I hate to put you on the spot—and whether or not you agree with what the OMA had to say on that?

**Dr Turner:** The OMA reflects the position of the psychiatric profession in a formal way. We reflect the hospitals whose services will be very much involved in implementation of these proposed changes. We've opened up the controversy about whether community treatment orders work and how they work and all that. There is some difference of opinion within the profession. There is also some difference of opinion in the literature. My colleagues in the psychiatric profession have reassured themselves that for the most part, community treatment orders are a positive change. I don't see myself as needing to actually conflict with that position.

**Ms Lankin:** I'm asking more specifically about the stress on hospital-based resources and the loosening of the criteria. They felt that CTOs would compensate, essentially, for the broadening of the criteria.

**Dr Turner:** The CTOs, if they're designed to reach a relatively small number of people in this province, probably will not have significant impact on the hospital system. What will have far more impact will be the closure of provincial psychiatric hospital beds. That ties in to a whole other type of program that we're developing called assertive community treatment teams. I don't know how much we need to get into that.

In terms of the form 1s, 3s and 4s, with the opening up of the commitment criteria, there are a significant number of people who don't currently qualify who would qualify. Whether or not those forms will actually be implemented on a given patient, to some extent, will depend on professional discretion. If we think of it, there are in this city probably about 400 to 500 to 600, I don't have an exact count, of people, many of whom are homeless mentally ill, who would probably meet these criteria. If they were to come into the hospital system—I'm just projecting, I'm dealing with a hypothetical—they would either wait in line for the beds or we would have to use professional discretion not to impose form 1s and form 3s on people.

In the profession, we would rather have our role be sufficiently clarified. We would like to know what public policy wants of us, and we would like to then be able to provide what is wanted, what is needed.

**The Vice-Chair:** Thank you very much for coming here today. I'm sorry, we've run out of time and must move on.

**Mrs McLeod:** A point of information: If I'm the only committee member that needs to know that, I'd be happy to be given private information and save research some time. We've just heard reference to a number of different schedules and forms—schedule 1, schedule 3, schedule 4—and an indication of the ways in which this legislation and the broadening of criteria would, I think the term was "significantly expand," the number of people who could be considered for admission under one of those forms. I'm wondering if we could get some clarification again so we understand what we're doing here as to what those different forms are and how much broader a population this would be extended to with the criteria in the proposed act.

**The Vice-Chair:** I have assurance from research that that's quite possible.

**Mrs McLeod:** It may be too broad, but I think we need to get some sense of—I get concerned when I hear a statement that the criteria expand to a significant number of people, when we're supposedly dealing with a very narrow targeted population. Again, I think that's a dilemma we have to come to grips with as a committee. Whatever information we can get that would help us define appropriately the group we're trying to address would be helpful.

**Ms Lankin:** I'm perplexed. I can understand it's very easy for legislative research to produce the list of the form 1, it being the form that the physician signs to send you for an assessment, or form 2, the JP, or the form 3, where the psychiatric assessment has taken place and you're actually committed, or the form 4, where it's



renewed. We can get those definitions. The impact of the widening of the criteria is in fact the subject of debate. That's why I wish we would have had much more time, because I think you're right that the breadth of that, and that's what we heard from the Canadian Civil Liberties Association as well, is the concern counterpoised against all of the talk we've heard about the CTOs applying to a relatively small number of people. These are very different impacts, and here's the group that could tell us most of that. Perhaps we should ask for unanimous consent to see if we could have Mrs McLeod's question put to the association and see if they could give us some guess-timate on that.

**The Vice-Chair:** I'm very conscious of the time. We have two more presentations, and we are limited in terms of the time at which we can sit. I think it is something that certainly we need to move on as a committee, as opposed to taking up our deputants' time. I appreciate the interest and I recognize that it's shared by all sides.

**Mrs McLeod:** I appreciate that, Madam Chair. I think it might be appropriate for legislative research to provide whatever information would be a response to my question which might involve a phone call later on to the people who have just made the presentation, if that's appropriate.

**The Vice-Chair:** Yes, fine.

Thank you very much for coming here today.

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## ONTARIO COUNCIL OF ALTERNATIVE BUSINESSES

**The Vice-Chair:** I'd like to call on the Ontario Council of Alternative Businesses. Welcome to the committee. For the purposes of Hansard, will you introduce yourself, please.

**Ms Diana Capponi:** My name is Diana Capponi. I am a psychiatric survivor. I'm also a founding member and the present executive director of the Ontario Council of Alternative Businesses. We receive funding from the Ontario Ministry of Health and Long-Term Care to provide employment opportunities for psychiatric survivors through the development of economic initiatives. Many of you may be familiar with some of our businesses, which include the Raging Spoon restaurant here in Toronto, A-Way Express Couriers, Fresh Start Cleaning and Abel Enterprises in Simcoe. I would like to take this opportunity to introduce you to the staff of the Raging Spoon, who I am honored to have here today supporting me through this whole submission.

The Ontario Council of Alternative Businesses is mandated to address the overwhelmingly high rate of unemployment, recorded at 85%, faced by people who have received a mental health diagnosis.

I will go back to the term "survivor." What does it mean? To many in the mental health sector, this term insults them, so I want to be sure that you folks have a strong understanding of where "survivor" comes from. There are certain outcomes which can just about be guar-

anteed once an individual has been labeled a schizophrenic or a manic depressive or whatever. These outcomes include isolation, extreme poverty and most often homelessness or horrific housing. In particular for people who end up in provincial psychiatric institutions and who have become institutionalized, these outcomes are a certainty. The term "survivor" does not refer to the illness, or should I say the perceived illness or diagnosis. It has to deal with the outcomes I've already mentioned. The folks that this province deems problematic, the folks on the street, the folks who talk to themselves, have unusual tics and body language are the true survivors of the system. They are examples of the impact of the system. It has nothing to do with the diagnosis.

For your information, you must know that the behaviours I have talked about are the result of medication and are side effects of these drugs. People mistakenly believe that what they are seeing is the mental illness or the schizophrenia. What they are truly seeing are the extremely negative side effects of very powerful medications. Furthermore, for many people, in fact the majority of folks, with the diagnosis I have already talked about, the drugs do not work. In fact, if this province were really concerned about the health of people with mental illness, I question why some of the new anti-psychotic drugs with less harmful side effects are not included with our drug care plan in the province.

I am a member of the Provincial Advisory Committee on Mental Health in Ontario. Over a year ago, this committee reviewed a number of issues related to mental health reform. The committee is made up of stakeholder groups from across the province: service providers, psychiatric survivors, family members and labour. The committee was established to make recommendations and to advise the Ministry of Health on mental health reform in this province. We reviewed the possibility of legislative review and decided to determine, first, why the existing Mental Health Act was not being adhered to and why the public has so little knowledge about it. We voted, and other than one vote from the Schizophrenia Society, all others were in favor of not changing the legislation.

Why then are we here today? The advice of this committee was not taken, and we can only guess why this legislation is coming forward. I am aware that many have come forward to submit to you about the civil rights issues inherent in this legislation. I will leave all that to them and only hope that you have heard them. A society is judged by how they treat the most vulnerable. Keep that in mind. Additionally, I'd like to add that it is common knowledge that the less power individuals have over their own lives, the more likely they will be abused. It is no wonder that women, women with disabilities and children are often victims of abuse and violence. It is no wonder that group home workers are facing prosecution for abusing their powers when locking out a developmentally disabled man from his home, leading to the amputation of his limbs due to exposure. It is no wonder that the last few psychiatrists in the Peterborough area are



all incarcerated in jail. It's no wonder that the head of psychiatry at the University of British Columbia has been convicted of rape and sodomy.

Unfortunately, these stories don't make big headlines in the press and they're not as good as "Schizophrenic Pushes Someone in Front of Subway." This sells more papers. The general public is very misinformed, and unfortunately so is Mr Patten, who originally buckled under the pressure of the Schizophrenia Society and CAVEAT. One always wants to respond to terrible stories of victimization in a quick way or in a way that will ensure it never happens again. The proposed changes to the Mental Health Act and Consent to Treatment Act will not end these stories.

Much of the good news lately in either the print or electronic media has come from our businesses. Our organization is entirely run by psychiatric survivors. We are all people who carry the label schizophrenia, manic-depressive, depressive, schizoid affective disorder, obsessive-compulsive disorder—the list goes on. We are not pushing people in front of subways. We are not killing anybody. We are running, managing and directing businesses. Many within the Schizophrenia Society—I'll call them SS—would have you believe that we are not the folks that are talked about in this legislation. I'd like to confront that right here. All of us who are here today have been formed or put into hospital against our will. We have experienced forced treatment. We have been in jail and we have lived on the streets. Now we have, through our own efforts, rebuilt our lives. We feel productive. We control our own decisions, largely because work became available. We were no longer treated like children. Other survivors had faith in us. We pay taxes. We feel productive.

Being a burden on society does not do anyone's mental health any good. One thing that happens when you are surrounded by well-intentioned workers within the system is that decisions are constantly made for you. You are taught not to accept or trust your own judgment. You are told when to get up, where to live, what drugs to take, how much money you get. Everyone who speaks with you is paid to do so. No one expects anything from you but violence or weird behavior. Any behaviour becomes pathologized. You are too happy, you are too sad, you are too angry, and that goes on. This is bound to happen within a paternalistic system which feels they have our best interests at heart. Those two words, "best interests," scare us the most. Class, culture and race have a lot to do with perceived best interests.

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Our organization today represents approximately 800 people who are now working and running their businesses. They are providing goods and services to their geographic community. They are proud of their businesses, they are productive and they are less dependent on disability pensions. These are all people who were previously deemed permanently unemployable. We got fed up with systems that left us out—employment programs, therapeutic programs—because we were deemed

not to benefit from any of them. We have turned all that around and have proven concretely what people with a mental illness or a diagnosis can do. Discrimination and ignorance are far too rampant, and I would hope that members of this committee will educate themselves on who we are and not be prey to the sensationalizing of some bad stories by a small percentage of people in our community. These stories are few and far between. That is why we look the way we do today; we are healthy because we are productive. Had you seen me coming out of Queen Street Mental Health Centre 17 years ago, you would not believe where I am today. I find it hard to believe myself.

The largest barrier to people maintaining their health and being productive is the discrimination we face due to the sensationalism of our perceived illness. People are afraid of us. Why? Because of media, and because of an industry that makes us become undesirable.

I went from Queen Street to the infamous Shannon Court, a privately operated rooming and boarding house, housing minimally 70 people, many of whom were severely ill. Jail would have been better. No amount of medication or ACT teams would have helped my mental health while I lived in a home meant for undesirables, where I suffered with lice and scabies while taking antipsychotic drugs and eating a diet consisting largely of Kraft dinner. I looked funny, I smelled bad, I acted badly due to medications, and I had no money. I was asked to leave places because of how I looked. As much as the SS will tell you this doesn't affect us, it does.

We have improved our health. We have amazing success stories. We have had much publicity of what we're doing. Don't dismiss our opinion because we now appear healthy. Don't buy the "it won't apply to you" story. CTOs should not apply to anyone. You have heard from the Ontario division of the Canadian Mental Health Association, you have heard from a number of organizations dedicated to improving the lives of psychiatric survivors, who are, in the majority, opposed to these changes. These changes could apply to all of us.

Today, gladly, I discovered that similar legislation in Connecticut was defeated just yesterday. Recently the province of New Brunswick also defeated it.

The changes to the existing legislation, the Substitute Decisions Act, include an avenue to change the prescribed wish of a person in care, wishes made while competent. With this new law those changes can be appealed, those wishes can be changed.

Mr Patten said that he didn't like the term "community treatment order"; it sounded punitive. I think language like "increasing consequences" sounds very punitive should anyone not be in compliance with their treatment. That's very scary indeed to all of us as survivors.

All people in the province of Ontario should be afraid of these changes. Think about your mothers and fathers, think about people with HIV, think about other people with life-threatening illness. This legislation can affect all of us.



I would like to focus on the message this committee, even the talk of legislative changes, has given to the public at large. It has reconfirmed that mentally ill people are not to be trusted, that we are violent, that we are dangerous and we can't be trusted to know what's good for us. All of the hard work of the council, of the Raging Spoon employees here today and all the other businesses trying to improve quality of life for our community, trying to educate the public, has basically been nullified by this stuff. It makes our work so much harder.

We spend so much time and effort spreading the message that psychiatric survivors do have skills and abilities; we are able to be productive citizens; we are able to work; that the most common determinant of violence is drugs and alcohol, not a mental health label. This is proven, and I hope there has been some research study into this. All the work that we have been doing is nullified by the press releases of these kinds of committee hearings. The public sees it and assumes that we should be put away. We are angered by this. We, with very little support, have struggled to have a little bit more economic advantage, to have a little more self-esteem. We market our businesses as survivor businesses. We fight consistently with traditional agencies and others who think we cannot produce. Now we feel we've stepped back 50 years.

We recently produced a one-hour documentary entitled *Working Like Crazy* which had a national airing. The Ministry of Health funded it because it would educate the public so that survivors would not be discriminated against. The news of this legislative change has blown any effects that the documentary may have had. The government should be ashamed. You should hang your heads in shame.

The existing act covers public safety issues. Most of us who have been formed, whenever we say we want a review while on involuntary status, miraculously become voluntary patients. Don't trust the psychiatric profession.

We need to improve services, we need improvements in medications and more importantly we need to continue to support organizations like ourselves who actually impact a person's quality of life.

And mostly, stop sending out horror stories about us. We are no more likely to be violent than other segments of the society. Do you force drunk drivers to take medication ensuring they won't drink and drive again? No, because you wouldn't get away with it. Do you force people who have abused their spouses into treatment? No, because you wouldn't get away with it.

Ignorance and discrimination should not be utilized to score political points. That is what we feel this government is doing. All the experts, especially us, will largely agree that this legislation will not only have little impact on the issues you are concerned about, but will cost money and be impossible, frankly, to enforce.

Hospital beds do not exist. Where will you put people? Are all our services going to be CTO police? Where are the appeal mechanisms? Are we going to end up in jails? Lately, it seems, in talking about survivors, there's

always a relationship to the criminal justice system. Is that a plan? Is that more discrimination?

Look at us and look at the Raging Spoon employees. Don't buy the SS stories that it's not us. It is us. There are many other family organizations that do not support this bill. However, the SS is well-connected and very powerful lobbyists. Let's spend our time and energy and money to address the issues that each horror story raises. The issue is not the lack of legislation; it's the lack of appropriate care and treatment. No one chooses to be ill; no one wants to be ill. If help is effective and decent and available, people take advantage of it.

Don't use our community to trick the public into believing all is well now. This most certainly will backfire on you.

**The Vice-Chair:** Thank you very much. We really do not have time for questions; you've used most of the time available. But we certainly appreciate your coming forward today with the information you've given us.

**Ms Lankin:** Madam Chair, just a couple of requests then: first, of legislative research. Ms Capponi made reference to the documentary that was recently aired on TVO. I'm wondering if we might attempt to obtain a copy of that. Perhaps in consultation with the clerk you might determine whether there is a time on the committee's agenda when we might view this. If that time is being taken up by presenters, perhaps there is an opportunity where, following the recess of the committee, those of us who are interested may stay and watch it collectively at some point. I would prefer if it could be on the record because I would actually like to see the transcript of Hansard have the transcript of the documentary.

Second, a request to the ministry: It's been raised a number of times that some of the newest psychotropic drugs and drugs for treatment of serious mental illness with the least severe adverse effects are not covered under the Ontario drug benefit program and the formulary. I would like the ministry to provide a response to the committee as to why that is the case and what the plans are for the listing of those particular drugs.

Lastly, I would suggest a recommendation to committee members. I've had the opportunity to have some experience with the Ontario Council of Alternative Businesses that Ms Capponi represents and some of the individual businesses like Fresh Start, which is under contract with my constituency office, and A-Way Express which is directly across from my constituency office.

I would really encourage, if committee members have not visited and toured an alternative business, having the council set that opportunity up for you because it's a very enlightening experience and it is one of the options, irrespective of what we do in legislation, and we should support the ministry in its continued and expanded support of it.

**The Vice-Chair:** Thank you very much and thank you, Ms Capponi, for coming.



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CANADIAN MENTAL  
HEALTH ASSOCIATION,  
METRO TORONTO BRANCH

**The Vice-Chair:** Our last presenter is the Canadian Mental Health Association, Metro Toronto Branch, Steve Lurie.

**Mr Steve Lurie:** I'd like to turn the floor over to my president, Eileen Dawe. She will start first; I'll follow.

**Ms Eileen Dawe:** My name is Eileen Dawe and I am the president of the board of directors of the Canadian Mental Health Association, Metro Toronto branch. Last year we provided community support and housing services to 461 people with serious mental illness: 60% have schizophrenia and 31% have mood disorders like myself. Most of the people we serve would meet the previous hospitalization criteria in your bill.

I am a volunteer who has been involved with CMHA for over eight years and am also a consumer of mental health services. I have battled depression for over 30 years. I've been homeless, jobless, suicidal and unable to function. This bill would not have helped me. What has helped me are three things: a good psychiatrist and social worker from my local hospital in Scarborough; housing and community supports provided by CMHA; meaningful daily activity, which for me is my volunteer work with CMHA.

I lost my job, my apartment, my trailer, all my material belongings, all that I had, because of my illness. I had to go and stay at my sister's, away from Toronto and away from my support system, sleeping on her couch, living out of a suitcase. I had no self-esteem. I was very resentful. I was thinking of death continually and I had problems with my medication.

Through my psychiatrist and social worker at the hospital, I got connected to CMHA and they helped me find subsidized housing and provided a community worker for support. When I got the apartment, this was something I never thought I would have again. Housing is so very important to us.

I still have bouts of recurring depression. In fact today, before coming here, I visited my therapist because right now I'm in a bout of my depression. Coming here is very hard. She told me to just take deep breaths and remember why I'm going there. I think it's important. There are times when I can't leave my apartment, or it takes me 45 minutes to maybe an hour to decide what I should take out of the freezer to have for supper. My support system helps me get through these times. They are there for me. That's what is important.

The other thing that helps is my involvement with CMHA. Everyone has a basic need to feel that they can contribute and that their lives have some meaning. For so many years this feeling was gone for me and the darkness that surrounded me was swallowing me up into the depths of hell. With the continual support from this triad support system, I am beginning to realize that having an

illness, any type of illness, does not mean your life is meaningless.

I must admit that my life is not the easiest. Each morning I awake with a certain amount of dread. Each day is a fight for me. I have choices to help me to survive, and I do choose to survive. It means taking my medication, realizing that I do have choices, and the result is that even though I still suffer from depression, I am able to cope, use the knowledge I've gained, and use the supports that have become a stronghold for me when I get ill.

Having resources available to you and being able to choose how you use them is a major part of recovery and empowerment. This bill is coercive and not empowering. To think that I could be arrested for up to 30 days after I told my psychiatrist I no longer need a CTO.

This bill does nothing to provide the 3,800 additional units of supportive housing that are still needed in Toronto. It makes no progress putting more resources into community mental health services.

The right thing to do would be to withdraw this bill and bring in community mental health systems legislation which would ensure at least \$351 million of additional funding for community supports and housing.

I want everybody to know I am my own best caregiver. It is my responsibility. I do not want to be thought of as some victim, some voiceless person who needs others to speak for me, care for me or think for me.

To do this, though, I need the means to do such, not as how some people think of people with a disability, but as a citizen of this country and this province. It is not hand-outs we are asking for, but a reaching out from all sources to help us be the people we were, the people we are and the people we are going to be. So much is up to you. So this I ask you: Withdraw the bill and do the right things. We are all in this game of life together. Thank you.

I'd now like to turn it over to our executive director, Steve Lurie, to provide some additional comments on the bill.

**Mr Lurie:** Thanks, Eileen. That's going to be a tough act for me to follow. I would remind this committee that about every 10 or 15 years we debate what to do with the mental health system, and so far haven't done the right thing. You can think back to the debates on Bill 190 in 1987 when David Reville brought forward, with some of our urging, draft community mental health legislation. All three parties thought it was a great idea. We're still waiting.

This bill, Bill 68, sets a different standard that we've not had before. It flies in the face of last year's Supreme Court Winko decision that says that for somebody who's not criminally responsible, unless there's an absolute and significant risk of serious criminal offences occurring, you must grant an absolute discharge.

We're saying that on the criminal law side—that's the Supreme Court saying, not Steve Lurie saying—people, unless you can prove a serious criminal offence is likely to occur, should be free from any coercion based on their



mental disability. This act moves in the wrong direction. It increases the stigma against the mentally ill as well. This is particularly important because we've ignored the advice of experts.

Marnie Rice and Grant Harris wrote a marvelous article which I've included in the package for the clerk that says: "Mental disorder and psychiatric disturbance are poor predictors of violence. Actuarial methods are more accurate in predicting risk than unaided clinical judgment." In other words, to pick up on Diana's point, you can't trust the clinicians on this one. Clinical judgment is a poor index. "Our research has shown that a diagnosis of schizophrenia is associated with a lower risk of violence."

You might ask: Why do we have this legislation before us? We should be putting in place more supportive housing. We should have been increasing the community-based mental health services that began with Mr Grossman's initiative in 1982, Mrs Caplan's initiatives in 1987 and Ms Lankin's initiatives in the early 1990s in mental health reform, but we're still not there. We're seven years into the mental health reform declared by the previous government and we have not even come close to meeting the spending targets. At least an additional \$351 million needs to be put on the table. It was an embarrassment that this was a health care budget and there was no money announced for mental health reform.

1800

The current legislation should be withdrawn and replaced by mental health systems legislation. As Diana mentioned in her remarks, the provincial advisory committee of which I am a member was consulted on the need for provincial legislation to build a mental health system and we were beginning to undertake that task. Now we have a much narrower and flawed approach to legislation.

We participated in the consultations about the proposed legislation. The overwhelming opinion in every consultation across the province was that the legislation was unnecessary and that the focus of activity should be on putting community mental health services in place.

This is further supported by a recent release of the World Health Organization study, which came out just weeks ago, on mental illness in seven countries, including Canada. It showed that 37.5% of the Canadian sample experienced at least one mental disorder, but only 21.8% had received any mental health services in the previous 12 months. We should be focusing on that. How do we ensure that all Ontarians have timely access to a full range of mental health services? That's what the bill should be about, not what we're talking about.

At the same time, CMHA and others are recognizing that the government has a majority. Unless this committee as a group is prepared to stand up and say, "Get back to square one," the bill will pass in some form. In that spirit, I've tried to bring forward some suggestions to make what I think is a badly drafted piece of legislation more workable.

(1) The Saskatchewan criteria for CTOs should be used rather than the current broad provisions, and in particular, I'm offended that the OMA's brief suggests broadening CTOs for everybody.

(2) The requirement for individual service providers to sign the orders will render the legislation unworkable, especially as an alternative to hospitalization.

It's 6 o'clock in the evening. Think about it. Somebody shows up, a psychiatrist has to inform them of their rights advice, consult with other service providers, arrange housing, arrange medication, get service providers to agree because their signatures are on the order and they're liable for a failure to bring the order through. This will just not work. What if the worker won't sign? What if the worker goes on vacation? What if they get sick during the term of the order? Would a whole ACT team need to sign an order by a team psychiatrist, or only an order from outside psychiatrist?

The process could be simplified using procedures that work for the support and provision of non-criminally responsible patients by provincial psychiatric hospitals. This approach would allow a psychiatrist to approve the provision of service by a service provider in the same way that a provincial psychiatric hospital administrator can approve where an NCR patient lives in the community and can assign supervision to approved persons. In this context, this should be based on point three.

(3) With the consent of the client and the service provider, the psychiatrist could approve case management services, attendance at clubhouse programs, living arrangements or other community programs. There could and probably should be an agreement between the service provider and the psychiatrist to notify the psychiatrist in the event of the deterioration of the client to the point where an examination would be warranted under the Mental Health Act.

Not only does that make sense, it's based on the duty-to-warn principle anyway. It would provide for an ability to say, "We think something is happening here, we think there may be some risk, we'd like to have the client examined," but not hauled in by the police, as this act provides for.

(4) The act should specify that CTOs can only be implemented by designated hospitals and psychiatrists. This would allow it to start slowly. It would allow for some control over who issues them and make monitoring easier. The thought that every physician in the province could issue a CTO is very, very scary, when the experience in most jurisdictions is that CTOs are rarely used to avoid hospitalization, they are more frequently used to shorten hospital stay.

(5) Most important, if you do proceed to go forward with this legislation, it must ensure that independent rights advice and advocacy is available to anyone who would be subject to a CTO. This will require a provincial strategy and increased funding to expand the operations of the provincial psychiatric advocate's office to provide rights advice and advocacy in both institutional and community settings. Right now the PPAO can only provide



advice in institutional settings and its whole future is limited by the divestment of the psychiatric hospitals.

(6) Most important—and this point was made by the Association of General Hospital Psychiatric Services—proclamation should not occur until the rights advice, advocacy and CTO administration regimes are in place, along with the full range of community mental health and housing support services across the province. The ministry regional offices should have to signify that a sufficient supply of services exists and that housing is in place in each region before CTOs can be issued.

(7) Probably most important, the legislation should be subject to a sunset clause, with continuation based on the results of evaluation showing that it has met its public policy objectives.

As a final point, our CMHA, Ontario division, presented you with 70 amendments. We ask you to consider our suggestions and theirs very seriously, but I must tell you honestly, I'm not sure you can make a silk purse out of a sow's ear.

**The Chair:** That leaves us about two and a half or three minutes. I think in the interests of logic, the NDP was next up in the rotation, so Ms Lankin, I'll afford you the opportunity to use those three minutes.

**Ms Lankin:** I appreciate both of your presentations today, and I want to say particularly that I know it must be difficult and that sometimes the settings are intimidating. I hope you will know that it's very important to us as well that you took the time to come.

I also wanted to speak directly with Mr Lurie. You've made reference to mental health reform. Not all committee members may know your long history with respect to this issue. A lot of people have come before us and said that if the resources were there in the community, these sorts of things would be unnecessary. Others have made references to things like the document that was produced by our government in 1993, Putting People First, and you had much to do with the preparation of that. Could you give us your opinion about what elements of mental health reform have not been proceeded with that would preclude the need for this legislation?

Let me just put a particular twist on that question. Accepting everything that has been said around the civil liberties issue and human rights issue, there are still some people who have presented before us who have told us very tragic stories about their families. We've heard many tragic stories about many people who have been victims of the system as well. They have told us tragic stories about their families and how they truly believe that while there should be more community supports, that wouldn't have helped their family members and that they needed some measures like this to intervene. Could you address community health reform, how you see it preventing the need for such legislation and whether or not you can address the concerns these family members have raised?

**Mr Lurie:** I guess the fundamental issue is the money required to shift the spending from an institutional basis to a community basis, a minimum of \$400 million.

Actually, in a report done for the previous administration to yours, the funding strategy group identified a need for \$600 million in new dollars to deal with the shortfall in funding for services for the seriously mentally ill in the community. So on the one hand you need services like the kind of things Diana Capponi mentioned: consumer supports, other employment programs, housing, more case management.

For example, the recent ACTT initiative of the Ministry of Health, which is to be commended, didn't deal with the fact that for most housing programs, for most case management programs, there are huge waiting lists of years, not just months. We have 70 people on our supportive housing waiting list, but because they're not homeless, they don't qualify for any of the new units that are being brought on stream in Toronto. So clearly across the province we need to do a whole lot more to put in place that full range of community supports: more outpatient programs, more clubhouses, more case management, more employment programs, more housing.

To deal with the issue of whether a CTO would prevent some of the tragedies, I guess I have to say that tragedies are going to occur. The problem is that the profession and all of us who work in the mental health field have to acknowledge that we're not very good at predicting violent acts. We're also not very good at intervening appropriately. But if you have more options for people and if you build more supports around people, other jurisdictions have found that these things work.

The problem we face is that you need to have a range of services that people will choose to come to. The literature on serving the homeless population, which is one of the more difficult populations to serve, has demonstrated that you really need a variety of services and housing forms that we haven't even begun to think about yet here in this country. There have been some very interesting initiatives south of the border. I would argue that if you provide more choice for people about a range of supports and actually make those supports visible and available, you're less likely to have to rely on coercion.

Also I think that includes the kind of thing I talked about where you would encourage agreements and arrangements between people and services and make it easy for people to be examined if there was risk. These days, if there's risk, you don't have many doctors who will move around and come to see a person, so you have to get the person to a hospital. That's still a problem in the current bill. So we need to think of many more creative ways where physicians and other professionals could be trained to provide support.

I also think back to 20 years ago when I started working here in Toronto. Friends and advocates had a crisis program which was peer support, where consumers went to other people's homes and supported them through crisis. I think we need to expand those services far more than we have. Many of the groups, like CMHA and the Ontario Federation of Community Mental Health and Addictions Programs, who will be speaking to you I guess at the end of the month, have always said if you put

the services in place, this will work. If you build it, they will come, but we haven't built it yet.

**The Chair:** Thank you both very much for coming before us here today. Ms Dawe, you did an excellent job. No reason to be worried at all.

That concludes our hearings in Toronto today. Just to put on the record—the committee members have already been notified—unfortunately we only had four expressions of interest in Thunder Bay and I think it makes no sense to have 10 people traveling the province at great expense to the taxpayers. The clerk will be inviting those people, including the CMHA, Sudbury division, to send in written briefs and they will certainly be circulated to all the members.

I should say to our friends from CMHA who are here today that you might want to indicate that because the Ottawa branch is making presentations, if the Sudbury branch has any different views they would like to put on the record, we'd certainly look forward to hearing them in Ottawa, because we do want to hear people's views. If

they aren't comfortable with written briefs, we would make available video conferencing in room 151 during one of our subsequent hearing days. But I think we can leave that in abeyance until the clerk hears the responses from the other three groups.

**Ms Lankin:** I have a query with respect to the remaining Toronto hearings and whether or not there is still time and space available there. One of the things I was thinking was, if we receive written submissions and we don't take time for video conferencing and if we get additional Toronto requests, we may need to have a sub-committee meeting to look at scheduling another Toronto day at some point and getting permission from the House. That's all I was going to flag, Mr Chair.

**The Chair:** Thank you for those comments. Since we won't see everyone on Tuesday, the committee stands adjourned until Wednesday, tentatively at 11 o'clock, in Ottawa.

*The committee adjourned at 1814.*











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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 24 May 2000

# Journal des débats (Hansard)

Mercredi 24 mai 2000

## Standing committee on general government

Brian's Law (Mental Health  
Legislative Reform), 2000

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sur la réforme législative  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 24 May 2000

Mercredi 24 mai 2000

*The committee met at 1100 in the Delta Hotel, Ottawa.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr Steve Gilchrist):** Good morning. I'd like to call the hearings to order this morning. We are here, of course, to hold our sixth session on the hearings into Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996.

## PSYCHIATRIC SURVIVORS OF OTTAWA

**The Chair:** We have deputations this morning and this afternoon. Our first group is the Psychiatric Survivors of Ottawa. I wonder if the representatives could come forward to the witness table. Good morning. Welcome to the committee. We have 20 minutes for your presentation, and it's up to you to divide that between either a presentation or a question-and-answer period for the members of the committee.

**Ms Sonja Cronkhite:** Good morning. My name is Sonja Cronkhite. I am the community and advocacy coordinator for the Psychiatric Survivors of Ottawa. We are a group consisting of people who have had significant personal experience of the mental health system. Many of our members are very concerned by this bill, as it affects them very directly. I've been given direction to voice their concerns.

There's often a misconception about Psychiatric Survivors of Ottawa, that we're some monolith of malcontents. I would like to say that we have a membership of around 200 people, and they are varied in their thoughts on the mental health system. We have everyone from people who are anti-psychiatry to people who have been referred to us by their psychiatrists and were very

happy with their relationships. I just want to say they come from a wide range of people.

This bill is touted as being about providing treatment to the seriously mentally ill. I question this. There is no improved access to services mentioned in this bill. There are no increases to community supports mentioned. Where is this treatment that people are expected to receive? We see involuntary hospitalization as an option in this bill, but not a very pretty one, and not a very realistic one, as anyone who has actually tried to seek institutional care can tell you. The beds and staff do not exist, and they may not always be the most appropriate course.

Also within this bill, I see that people under CTOs are expected to "receive continuing treatment or care and continuing supervision while in the community" and there seems to be an assumption that this capacity exists in Ontario. I can tell you this: There's a very long wait for community supports. People would love to have access to community supports, and it wouldn't take a community treatment order to get them there. People want and need to be supported, but I don't see support anywhere in this document.

In fact, it seems likely that people will feel the loss of some of their current supports. Community treatment orders will undo a lot of trust that has been built up over the years between patients and their caregivers, be they ACT team members, case managers, social workers. Trust is a very large issue for people who feel vulnerable. If people are convinced to try something by someone they trust and do it because they want to feel better, then they are far more likely to stick with it. You can't trust and confide in people who are obliged to turn you in, or medicate you, or send you to the hospital. Community support workers will no longer be supportive. Their role will become to be informers and enforcers. In effect, they will become parole officers. Hence, people engaged in these relationships will no longer be receiving any support in the true sense of the word.

Another pitfall I'm hearing about is that people who need help are going to avoid seeking care altogether. I've heard this again and again from our members. When faced with a system in which they may have no say over their own care, they choose to take their chances on their own. This situation would be unspeakably sad, not to mention unnecessary.

Perhaps the greatest concern and most fundamental flaw in this is that it is not about support or care at all; it

is about treatment—forced treatment. Knowing the traditional mental health system as well as I do, I can imagine that treatment translates directly to medication.

It is not true that if people just took their medications, all would be well. Pills will not cure poverty, dysfunctional families, homelessness or loneliness. At best, they should only be one part of a treatment plan; at worst, they can be devastating. People are not merely being non-compliant. There are some very rational reasons for not taking medication. These are: They can have extreme and often permanent side effects; they are very expensive; they can affect your ability to work; the side effects can make you appear strange or frightening to others; they can affect your personal relationships; and they simply may not work, they may not make you feel any better at all.

The individual needs to decide what is a reasonable trade-off. To take medications or not is a very personal decision.

I understand that people are concerned about the perceived potential for violence, but you're looking at the wrong people. As I'm sure you've heard before, study after study has proven that people diagnosed with a mental illness are no more likely to commit violent crime than anyone else. In fact, I have footnotes on some of these studies in the brief I've submitted.

Much ado has been made about the fact that this bill is mainly aimed at those individuals with a diagnosis of schizophrenia. Yet, according to the MacArthur study: "people labeled schizophrenic are no more violent than others. Rates of violence do not change according to diagnosis."

Yes, there are times when a person suffering from a mental illness is a genuine risk, but current mental health legislation allows action to be taken when he or she clearly demonstrates behaviour which endangers life and limb.

Vulnerable, law-abiding individuals need not be penalized along with the very few but well-publicized offenders. It makes no sense to threaten an entire group of people—one in five Canadians, according to the Clarke Institute of Psychiatry—with losing their liberty and freedom of choice when they have not committed a crime and are not at a higher risk for committing one.

To sum up, we feel this bill is unnecessary for a number of reasons: First, the present problems could be addressed by easier access to community supports; for example, safe houses, crisis response, supportive housing, case workers and assertive community treatment teams.

Also, the current Mental Health Act, Substitute Decisions Act and Health Care Consent Act adequately cover the concerns. In fact, there is a provision in the Mental Health Act that provides for a kind of community treatment order. At the moment they are not working, because physicians do not know how to correctly use them and there are not enough resources in place for the community even if they did.

Furthermore, Psychiatric Survivors of Ottawa objects to the confinement or forced treatment of citizens who

have committed no crime and pose no identified risk to themselves or others. It is not a crime to refuse treatment, to be poor, to be homeless, to be different, to act strangely, to be sick. What we are asking is to keep our civil rights intact.

With that in mind, we have made three recommendations: Do not enact Bill 68; develop accessible, appropriate and timely community supports for persons in the mental health system and their families; we need education for physicians on the correct usage of the current Mental Health Act, Substitute Decisions Act and Health Care Consent Act.

Thank you very much for your time.

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**The Chair:** Thank you. That leaves us about three minutes per caucus for questioning. We'll start the rotation with the Liberals.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** One of the very clearly stated criteria for a community treatment order is that the physician issuing the order has to be satisfied that community supports or treatment are available. Given the fact that I agree with your concern about the lack of community supports and full comprehensive treatment options being in the community right now—I think that's a major concern we would all have—if the community treatment orders could only be issued if there's satisfaction that the community supports are there, do you think this bill could actually be a way of identifying the gaps that are in the system in the sense of, if a review is built in and the community treatment orders aren't being issued, and the reason they aren't being issued is because the community supports and treatments are not available, it's a way of identifying the fact that we have not really made very much progress in the community in that regard?

**Ms Cronkhite:** I don't think we actually need a community treatment order to recognize the fact they're not there. I think you've probably heard that at every stop you've made. I don't think we need to pump a lot of money into a bill to find that out yet again. That's known. That's not a secret. There are gaps, and every service provider can tell you that.

**Mrs McLeod:** You mentioned threatening an entire group of people. One of the things we've heard at committee regularly is that community treatment orders would only benefit a very small, very narrowly defined group of people. Do you believe there is a small group of people who could benefit from this and that one of the problems is that this group is not narrowly enough defined in this bill?

**Ms Cronkhite:** Again, I don't see this bill as being necessary to define that small group of people. There are already provisions—I think the leave of absence agreement in the Mental Health Act. Michael Bay has gone around the province—

*Interjection.*

**Ms Cronkhite:** According to Michael Bay, you can. He has been sent around by the province of Ontario talking about this.



**Mr Richard Patten (Ottawa Centre):** His board overturned it when they tried to use it for that. Anyway, sorry.

**Ms Cronkhite:** Anyway, he has gone on record as stating that if properly used, it can work, it can do this job. This system is not going to work for these people. Just having them in the community, having them perhaps receiving medication, some people, if they are violent, medication will not make them less violent. I think we have to look at that. This may not be strong enough for some people, and it's too strong for the majority. Some people, even with community treatment orders, will still be dangerous. We need something to deal with those people, and this isn't it.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you, Sonja. As I understand it, no community treatment order can be issued unless the person agrees or the substitute decision-maker agrees. Doesn't that cover, to some extent, the concern?

**Ms Cronkhite:** No.

**Mr Marchese:** All right, explain.

**Ms Cronkhite:** When your choices are involuntary hospitalization or signing a community treatment order, you're really choosing the lesser of two evils. Most people would not consider that voluntary. If they said, "We can kill your wife or your child," that's not voluntary. You're choosing the lesser of two options. I know that's far more extreme, but it's not really voluntary when the power imbalance is so great and you're talking about your liberty.

**Mr Marchese:** You're opposed to community treatment orders altogether?

**Ms Cronkhite:** Yes.

**Mr Marchese:** You're saying what we need are supports?

**Ms Cronkhite:** Yes.

**Mr Marchese:** What some people are saying is, if you're going to pass this bill that has this as one of its features, then you've got to have the supports in place. If this were to go through—I know you're saying you disagree with it, but what you're saying is, the supports are not there. They are not there at the moment, and you probably have no faith that they will be there in the future. Is that—

**Ms Cronkhite:** This is true. I've been part of the district health council in the past in Ottawa-Carleton. I've also been part of the regional coordinating committee for mental health for the eastern region. We've seen promise after promise that as they cut beds, we would have services back in the communities. Well, the beds are cut and we haven't seen the services through reallocation. No, I think anyone who has spent much time working with mental health has no faith that we really will get our community supports.

**Mr Marchese:** I was reading an opinion by Dr Turner, who says the way that this is being redefined will capture so many more people who would require hospitalization. We already have a problem in terms of being able to put people into hospitals. There are just no beds.

Is that part of the concern you were raising earlier on as well?

**Ms Cronkhite:** We have members who try to get into hospital who are feeling intense emotional pain; they're afraid. Maybe they're hearing voices; they don't like what they are saying. They go to the hospital and there's no place for them. Perhaps the hospital isn't the best place for them. Maybe they don't need medical supports, but there is no place for them. They can't go to the hospital. They don't have any place else to go. That's a great problem.

**Mr Marchese:** But you're saying some people do need help or treatment.

**Ms Cronkhite:** Some people will say that. They will come to you and say, "We need help, but we can't find it."

**Mr Marchese:** OK. You're saying some of the help may not be in a hospital necessarily. It could be in the community, but the services are not there.

**Ms Cronkhite:** They're not there to meet the need, no.

**Mr Brad Clark (Stoney Creek):** You're opposed to community treatment orders?

**Ms Cronkhite:** Yes.

**Mr Clark:** You support the Mental Health Act as it is currently written?

**Ms Cronkhite:** Yes.

**Mr Clark:** Can I ask you a question, then? The leave of absence in the current Mental Health Act states:

"(1) The officer in charge may, upon the advice of the attending physician, place a patient on leave of absence from the psychiatric facility for a designated period of not more than three months, if the intention is the patient shall return thereto.

"(2) The leave of absence may be permitted upon such terms and conditions as the officer in charge may prescribe."

The leave of absence has been described to us by many people as the precursor to community treatment orders, that it is in fact a community treatment order and that it is a step down from a psychiatric facility to the community. You're opposed to community treatment orders, but you support the current Mental Health Act, which in fact has community treatment orders in it, assigned as leaves of absence. How can that be?

**Ms Cronkhite:** That can be because in this law how someone gets in the hospital is much wider. The latitude is much wider for people ending up in that position in the first place. There are some people for whom, if there were those benefits and the doctor saw that these people, after being in the hospital, perhaps could step into the community if there were the supports—for a very few people perhaps, but this has such latitude in how people—

**Mr Clark:** Are you opposed to the criteria or are you opposed to community treatment orders? You just talked about criteria.

**Ms Cronkhite:** I am opposed to the criteria, and I'm also opposed to the number of people who could be put



into community treatment orders. I also don't think it's the best way to go.

**Mr Clark:** But you understand that the community treatment order is in essence a leave of absence agreement, which is currently in the act.

**Ms Cronkhite:** But much wider, with much larger implications.

**Mr Clark:** You can address the criteria, but do you support the community treatment order? You support the act with the leave of absence agreement. Do you support community treatment orders with narrow criteria?

**Ms Cronkhite:** With narrow criteria. I do not support the act as it stands, the Brian's Law act as it stands.

**Mr Clark:** If the criteria were narrowed, would you be supporting community treatment orders?

**Ms Cronkhite:** If very, very narrow, but I—

**Mr Clark:** So a narrow group of people?

**Ms Cronkhite:** You're talking about two different laws. We would have to change so much in this law that it would not be the law that it is now. I'm speaking for myself now. There are also other opinions from my group.

**Mr Clark:** You can understand the confusion it causes for me when I look at a leave of absence agreement, which in essence is a precursor. It was a catalyst. It's something that spawned community treatment orders.

**Ms Cronkhite:** Yes. You will find other people in my organization who would not agree with them under any circumstances. I'm not happy about the leave of absence personally. I understand it is something that is in there that can be used in a similar way. What I'm saying is, we don't need this law because that is there.

**The Chair:** Thank you, Ms Cronkhite. We appreciate your coming before the committee this morning and bringing your perspective. We appreciate that very much.

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#### JULIO ARBOLEDA-FLÓREZ

**The Chair:** Our next presenter, Dr Julio Arboleda-Flórez, if you could join us at the table here, please. Good morning. Welcome to the committee. We have 30 minutes for your presentation. Again, you can divide that between an actual presentation or a question-and-answer period as you see fit.

**Dr Julio Arboleda-Flórez:** Thank you for the opportunity to present my opinions regarding this issue to you. I plan to use about 15 minutes presenting these matters, and then I'll have the rest of the time for questions from the group.

You have in front of you, I believe, a document called Community Treatment Orders that I have just passed around.

**The Chair:** It's coming.

**Dr Arboleda-Flórez:** Now you owe me one minute.

**The Chair:** We sound like parliamentarians.

**Dr Arboleda-Flórez:** I tried to figure out what are the issues in regard to community treatment orders. Several arguments have been advanced against them. Some of the

arguments come from philosophical attitudes against a particular piece of legislation or way of providing services; others are advanced about the lack of services or lack of treatment otherwise; and others are advanced simply on some kind of rhetoric against any kind of medical interventions, whether they are medications or whether they are talking therapies or whatever. As long as it is provided by a medical doctor or nurse or somebody related to a hospital situation, then that is considered bad in itself.

The question is, what is the rhetoric and what are the issues?

Community treatment orders, we try to say, are for only those who are severely and persistently mentally ill. Those are the ones who really are the concern of the mental health system, because those are the ones who most often end up non-compliant to treatment; who usually end up having problems with substance abuse; who, when they become acutely psychotic, seriously mentally disturbed, have difficulty recognizing their own symptoms; and who also have difficulties establishing alliances with hospital staff and their relatives, who sometimes, completely fed up with the situation, also become uncooperative in helping them and in helping the staff.

What are the effects of non-compliance? The effects include poor community adjustments; these individuals simply do not fit well in the community. They are the ones who usually end up in problems with homelessness, and homelessness carries a tremendous import on the issue of victimization. About 20% of individuals who are homeless and severely mentally ill get exposed to major attacks, about eight times higher than other persons who are not sociatively disturbed. There is an increase in rehospitalization. There is an increase—in one article a 100% increase—in standardized mortality rates for suicide. There is an increase in criminalization and recriminalization, and there is an increase in violence.

The point has been made: Who are they who are so violent? We consider that, of those persons who are violent, only about 6% are the ones who cause most of the trouble. About 6% of those individuals who cause violence in mental institutions belong to this particular group and are responsible for 50% of all the attacks and 50% of all the serious attacks. The point has been made that mental illness does not cause violence. If you push the line as to what is the cause, then that statement is semi-correct. The fact is that there is not enough scientific evidence yet to prove that one causes the other. That does not mean that one is not associated with the other.

We know an association says 25% of these types of patients present fear-inducing behaviour during the previous two weeks before admission in the community. Some 32% of these patients present such behaviour at emergency, and 13% of them attack personnel at emergency. About 20% of admissions to acute psychiatric units have committed violent assaults in the previous two weeks before admission; 60% attack relatives.

We know very well, and stories are clear on this, that threat/control override symptoms—those are delusions,



hallucinations—dementia cases and problems with acute manic behaviour are the most common symptoms at attack time. We also know that current and former patients more likely engage in hitting, fighting and the use of arms in the community than normal controls. These are the studies done out there on the street.

There is an association, or co-morbidity, with substance abuse. Obviously, individuals who have used substances and are not mentally ill are more violent than those who are normal and are not using substances. But those who are normal and use substances have less violence than those who are mentally ill, especially those suffering major illnesses, and who abuse substances as well. We already know that lack of compliance increases that they will substance-abuse.

Previous criminality and previous violence are predictive factors for future criminality and violence.

There are plenty of histories to indicate that prisoners are at a higher risk of suffering from mental illness, even prisoners immediately taken or examined 24 hours from being taken from the street or being detained. The stories are there. In the stories by Bland, 92% have a life prevalence of a mental condition; in the stories by Arboleda-Flórez, about 50% of women and 56% of men had a previous month prevalence of mental problems.

About 31% of evaluatees in forensic care and forensic situations have reoffended violently, especially if they have a combination of anti-social personality disorder and abuse of substances. Among serving prisoners, we also know that 17% of criminals with a history of mental illness commit violent acts, compared to 13% of the others. We also know that 5% of those prisoners who have a problem with mental illness commit unmotivated violent acts, compared to only 1.2% of those who do not have that history.

Some 23% of federal prisoners have had a diagnosis of mental illness. Among ex-prisoners, those with a history of criminality and mental illness have a higher history of re-offending.

In the community, over 50% of people diagnosed as having had a mental illness had been violent, compared to only 19% of those without such a history; 54.5% versus 15.4% in another study of a similar type.

On a birth cohort, in Sweden, among those with mental conditions, men were at risk 4.16%, and women 27.45%, of having been in prison because of violent behaviour.

There are conclusions in that regard with that kind of literature: The prevalence of mental illness, particularly problems with substance abuse disorders, among incarcerated populations is extremely high; ex-mental patients are at a high risk of arrest and violence when released into the community, particularly if they have a history of prior arrests or violence or if they are untreated and experiencing psychotic symptoms; hospitalized mental patients are at a high risk of committing violence, including in the psychiatric institutions; and family members, not the general public, are the ones who are exposed to the violence.

There are problems with the controls on the CTOs, community treatment orders. First, there is the issue of the threat to civil liberties versus the little positive treatment to be done for casualties of deinstitutionalization. Those individuals we are talking about fall off the deinstitutionalization possibilities, not because there are not enough services in the community, but many times because their condition does not allow them to access the services, even when they exist. The services are there; the person who is acutely mentally ill, seriously disturbed, doesn't go for the services.

So there are concerns, of course: on civil liberties, on the liabilities on the clinicians, on the fiscal burden on the state, on the lack of information that the state provides citizens, and on the failure to enforce the consequences of non-compliance. Those are the concerns.

For that purpose, there are guarantees. We have eligibility restrictions. It's a small group; there are restrictions; we know exactly who they could be. There are limitations on the therapeutic interventions. We are not saying in the treatment orders that everybody gets whatever is there; there are limitations on the physicians and on the treatment teams. Those limitations do not indicate only medications; it's a whole range of approaches. Of course, there are procedural considerations and guarantees to protect the rights of the patients.

What is the case against community treatment orders? Some people say it's another failed attempt at benevolent coercion, because we have experience in our society of previous attempts at benevolent coercion that have failed in the past. Some say there is too much state intrusion. Some say this is a rebirth of a need-for-treatment standard. But this is American literature. In Canadian legislation we do have need-for-treatment standards and they work well. There are problems with quality control, of course. There is the issue of no right to refuse treatment and there are other problems of undermining the therapeutic relationship. Those are the problems that those organizing and those applying community treatment orders will have to be concerned about.

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What is the case for? What is liberty if it is a negative liberty? Is liberty to be there on the street being victimized, being raped, being mugged, suffering, being recriminalized? That is not liberty. It is a negative way of liberty. We think liberty should be a positive way of having your mind clear to make decisions.

There is the case for more broadly based treatment. The community treatment order opens the door to better treatments, more appropriate treatments and imposes an obligation on the state. It also helps in overcoming the rehabilitative inertia, because there are no mechanisms. Clinicians simply do not act.

It would prevent the re-emergence of asylums. We already hear many individuals asking for reinstitutionalization, and it is a middle ground between community reinsertion philosophy and reinstitutionalization.

Now, what are the results? There was a major study or a major paper in which Maloy compiled 11 studies of



histories up to 1992. A review of 11 histories to 1990 provides almost no valid empirical evidence in support of the effectiveness of IOC—that's involuntary outpatient commitment, the terminology in the USA—vis-à-vis treatment compliance, success in the community for people with severe and persistent mental illness or amelioration of the problems associated with revolving-door patients.

There is another study that ended up saying it doesn't work, and I don't quote it here because it came to me too late. In contrast, we have other studies which I'll mention in a second. The study by Bursten found no differences in readmission rates between patients ordered to mandatory treatment after involuntary hospitalization and patients in a control group. He concluded that mandatory outpatient treatment had no effect on recidivism. But this conclusion may be qualified by the strong evidence indicated in his own group, that the outpatient commitment laws were not enforced in the cases that he had in his group.

So those are the two major studies. One was not a study; it was a recapitulation of the literature up to 1990, and this person says "almost" because some of the studies he reviewed were positive. And there is a study that says it didn't work, the study of Bursten.

Then there is the positive side. Hiday and Scheid-Cook, in 1989: Patients who were committed to outpatient treatment were significantly more likely than patients with two other dispositions, other types of systems, to utilize after-care services and to continue in treatment even after the order had elapsed.

Fernandez and Nygard, in 1990: State hospital admissions and days in hospital during a three-year period experienced statistically significant decreases. The biggest per cent reduction occurred in admission rates.

Geller, in 1992: Two periods of coerced community treatment, of eight months in the first period and all together two to four years duration, produced positive results quite distinct from the periods of uncoerced community treatment.

Swartz, in 1995: Involuntary outpatient commitment appears to provide limited but improved outcomes in rates of rehospitalization and lengths of hospital stays.

Borum, in 1997: More than 80% of respondents—those are people who have been the subject of a community treatment order—perceived that the court order for outpatient commitment required them to keep their appointments and to take medication as prescribed and helped in keeping them out of hospital. There was a satisfaction rate of almost 80%.

The last study that just appeared in December 1999 by Swartz and collaborators: Outpatient commitment can work to reduce hospital readmissions, 57% lower, and total hospital days, 10 days fewer per person when orders are sustained and combined with intensive treatment, particularly for individuals with psychotic disorders, the ones who would benefit most from this. There were 72% fewer readmissions and 28% fewer days of hospitalization.

In my opinion, there are enough studies to say this works and it works well.

**The Chair:** Thank you, Doctor. Just before I go to questions—I don't normally do this, but five lines up on the last page of your presentation, it reads 20 but you read into the record 10 fewer days. Was that an intentional change?

**Dr Arboleda-Flórez:** Which page was that?

**The Chair:** The very last page.

**Dr Arboleda-Flórez:** It says "work to reduce hospital readmissions and total hospital days, 20"—it's 20 fewer.

**The Chair:** OK, so it should be 20. You read into the record 10.

**Dr Arboleda-Flórez:** Oh, I'm sorry.

**The Chair:** That's fine, I just wanted to make sure we had an accurate picture.

**Dr Arboleda-Flórez:** It's 20 days fewer, and for those acutely psychotic it's 28.

**The Chair:** Thank you very much. You've left us 15 minutes, so five minutes per caucus. This time the rotation will start with Mr Marchese.

**Mr Marchese:** Thank you, Dr Flórez. We appreciate the analysis, pros and cons. You mention that it's not a problem of accessing services; the services are there. You don't see a deficiency then?

**Dr Arboleda-Flórez:** The services are there—

**Mr Marchese:** Sorry. The point you made was that it's their own condition that prevents them from seeking the service rather than the problem being that the service is not there.

**Dr Arboleda-Flórez:** I say that even in those districts where the services are available, if a person is seriously mentally ill, the mental illness by itself prevents them from accessing the services, even when they are available.

**Mr Marchese:** "The services are there," is what you basically said, whereas the previous speaker said that the services are not there in terms of the supports the people need.

**Dr Arboleda-Flórez:** I speak from my area. I don't think that we are so severely underserved in south-eastern Ontario, the Kingston area. I don't say that everything is perfect, but the services are there. The problem is access when the person is so seriously mentally ill.

**Mr Marchese:** Under "Community Treatment Orders," where you make a case for, under 2 you say that with this act there will be more broadly based treatment. What is that again?

**Dr Arboleda-Flórez:** It means that the treatment order obliges the physician to enter into negotiations with the treatment team, not to simply say, "Here is the prescription for the medication," but to have a complete treatment team that covers many other alternatives to treatment than just simply medications.

**Mr Marchese:** Which is not the case at the moment.

**Dr Arboleda-Flórez:** Which is not the case. Many times the physician or the psychiatrist simply goes ahead and prescribes.

**Mr Marchese:** In terms of the community treatment orders, there was a point in Saskatchewan, according to the Centre for Addiction and Mental Health's document



Community Treatment Orders: Overview and Recommendations—this is what they say about that:

“Much can be learned from the Saskatchewan approach to introducing CTOs and their framing of their legislation. The province saw the need for a broad-based consultation process and took two years to complete.... It also assumed that the infrastructure of a comprehensive mental health system needed to be in place before any changes to the Mental Health Act were made. Thirdly, the legislation included strict criteria for issuing a CTO so as to limit the application to the very small number of people for whom it might be beneficial.”

That’s a concern they raised. Does that apply to this bill?

**Dr Arboleda-Flórez:** It applies to this bill. First of all, we have to make sure that the services are available, that the community alternatives are there. Second, we have to make sure that the protections of the rights of the person are there. In this particular piece of legislation it is on their own consent, or if the person cannot give consent there are other safeguards. The person also has the ability to call on a lawyer, has the ability to access counsel. All of those protections are there, so in my opinion, the concerns that were raised in Saskatchewan are being taken care of under this legislation here in Ontario.

**Mr Marchese:** So it’s quite possible that the services may be available in some communities but not in all communities.

**Dr Arboleda-Flórez:** It is a possibility.

**Mr Marchese:** It would be the duty of the government to make sure those services are there but, God bless, who knows?

**Dr Arboleda-Flórez:** It is a possibility, but I believe that the legislation imposes an obligation on government to provide the services.

**Mr Marchese:** It usually does, doesn’t it? There’s a concern here. The health professional issuing a CTO does not have to be a psychiatrist in this bill. Does that concern you?

**Dr Arboleda-Flórez:** No, that doesn’t necessarily concern me because it may be—that is the question—that the broad type of therapeutic interventions may not require medication. Usually, it is the psychiatrist or the family physician who is in charge of that or giving the medication. It may be that there are other ways of dealing with the case without necessarily being medications.

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**Mr Marchese:** I understand, but in some places in Ontario you may not have psychiatrists. So usually, yes, they issue the order, let’s say, but in some places where there is no psychiatrist, somebody else has to deal with that, and you’re saying that might be all right.

**Dr Arboleda-Flórez:** Medical practitioners, general doctors and general practitioners are usually trained on psychiatric issues and there are plenty of ways of training them or helping them whenever there are difficulties. Most psychiatric systems have access to consultations in cases of difficulty with a general practitioner.

**The Chair:** Mr Marchese, we’re actually beyond our five minutes.

**Mrs Julia Munro (York North):** I certainly appreciate the kind of balance you’ve provided for us in your assessment. I want to come back to a couple of issues that have been raised by you, certainly in conversation with Mr Marchese. You talked about the fact that by legislation there is an imposition, if you like, on the part of the government to provide these services. I would just call your attention to the fact that in the legislation it specifically says that the treatment or care and supervision required under the terms of a community treatment order are available in the community. I just want to reinforce your comment that this is in the legislation itself. Although some made the comment that their concern about community treatment orders might imply that the services weren’t there, I think you’ve pointed out for us quite successfully that the opposite is true.

I was going to ask you about the role of physicians, but I also want to come back to something that is a recurring theme by many presenters: that this piece of legislation spreads too wide a net and that there’s a concern in that regard. I just wonder if you would care to elaborate a little further in your sense of just how small a group this is directed towards.

**Dr Arboleda-Flórez:** I think the legislation is restricted enough for individuals who are, as we say, seriously, persistently, chronically mentally ill, and especially who keep having recurrences and relapses. The legislation clearly says it has to be after several admissions in a particular period of time for X number of days etc. That’s restricted enough. A person without that kind of problem, without that problem of non-compliance, would not be relapsing so regularly, so it is restricted enough.

It says during the three-year period prior to the order, where a patient was “in a psychiatric facility on two or more separate occasions or for a cumulative period of 30 days.” Those are the restrictions on eligibility, which I think are extremely restrictive, even more restrictive than what we have in legislation in other jurisdictions in the USA.

**Mrs Munro:** I think that’s really an important issue for many people.

I want to ask you to elaborate a little bit more on—I’m not sure of the page number—where you were talking about community treatment orders and the issue you’ve described as overcoming rehabilitative inertia. I think that’s something we as a committee need to hear a little bit more about.

**Dr Arboleda-Flórez:** That simply means that what is happening many times is that everybody shrugs their shoulders. “There is nothing to be done. There is no way to continue dealing with this person. Wait until he commits a crime. We’ll get him in jail.” That’s why the jails are filled with them. In my own stories, as I said, about 50% of females and around 55% of males have a one-month prevalence of a mental condition. This is not only a problem of personality disorder; these mental conditions include the very serious ones, such as major depressions, schizophrenia etc.



The stories of Bland in Edmonton say exactly the same. He measured lifetime prevalence, and about or over 90% of persons in prison, arrested in remand centres, had those problems. If we then look at the number of mental patients in prisons serving time, not just remanded, the pathology is exactly the same. It's extremely high. If we go further, past to penitentiaries, it is extremely high. So what we are doing is therapeutic inertia; nothing to be done; shrug the shoulders. He commits a crime. So what? The justice system deals with him.

**Mr Patten:** Doctor, you're affiliated with which hospital?

**Dr Arboleda-Flórez:** I am the professional head of psychiatry at Queen's University and I'm the psychiatrist-in-chief of the psychiatric services.

**Mr Patten:** I have two quick questions and then my colleague Mrs McLeod would like to ask a question.

We've heard generally that the population of the mentally ill are no more violent than the general population. I concede that point as a generalization. However, you've provided some data that suggest that within subgroups some people who are suffering from psychosis, in other words untreated—in certain circumstances you're talking about a factor that may be eight times as great as another person. There were two studies I read a year or two ago from England and Scotland that suggested about a 10-times factor. Essentially paranoid schizophrenic males who are untreated, suffering from psychosis, have about a 10-times factor. Does that concur with your research?

**Dr Arboleda-Flórez:** It does concur. The statement, "They are no more violent than"—well, of course they're not, because about 25% of the population, at one time or another in the year, have some kind of mental problem. All of us have mental problems of some type or another. Of those 25%, about 6% require treatment and 2% require admission. So we are really slowing down. If we take all of the mental patients in the community, of course the thing dilutes itself, especially in countries where they don't have so much violence or acute violence as we have in Canada, thank God. In other countries it will be higher, because in the United States, for example, the levels of violence are higher.

The question here is that specific groups of mental patients do have a higher rate of violence, and there are stories after stories, not only on patients just released—they're comparing them to normal controls—come way high up when they are so psychotic.

**Mrs McLeod:** There are so many questions I'd like to ask you to take advantage of your expertise. I'm going to cheat a little bit and I'm going to place four questions on the record. My hope, since I know you won't have time to answer them all, is that we might be able to prevail upon you to respond maybe to a phone call from research afterwards. But I don't want to miss taking advantage of your expertise.

My first question would be to recognize the statement you've made both to Mr Marchese and Mrs Munro about the obligation placed on government under this legislation to ensure that treatment is available, but to tie my

concern back to Mr Marchese's question about the ability of non-psychiatrists to prescribe community treatment orders, which you said didn't concern you. I guess my concern would be, in the absence of a full range of community treatment options and supports, would there be a danger that the only treatment that might be prescribed and considered adequate to fulfill the community treatment orders would be medication and that we would in fact still be leaving people with mental illness without a full range of community supports?

If you don't mind, I'm just going to table my questions. This is very unfair, but otherwise I'm not going to be able to raise all my issues.

The second question I'd like to be able to ask you is, in defining the very narrow group that might benefit according to the studies, are we clinically talking exclusively about people with acute psychotic states of schizophrenia? Would any kind of enforced compliance be inappropriate, for example, for manic-depressives, or can we not define the target group clinically in such a narrow way?

My last questions were around your intriguing statement under guarantees about limitations on therapeutic intervention. I'm wondering what you would consider to be appropriate limitations. Would you, for example, have a prohibition on any use of force in order to ensure compliance? For example, would you be as specific as limiting something like enforced ACT?

I'm sorry to do that, Mr Chair. I didn't know how else to take advantage of this man's expertise.

**Dr Arboleda-Flórez:** The first one is in regard to the issue of who will be there to provide the treatment. I repeat: General practitioners are very well taught on psychiatric issues, or if not, there are plenty of training opportunities and plenty of opportunities for them to access consultations—telepsychiatry, for example. We do telepsychiatry with Timmins. We do telepsychiatry around Kingston. There are plenty of telepsychiatric systems in London, Ontario, and at McMaster University, and general practitioners access consultations, not just psychiatrists. Any one of them could be accessed at any time.

**1150**

I don't have any concerns in that regard as long as there is a willingness—and this is also something that I didn't say—to help the practitioner, the clinicians, to also be more effective and to limit their sense of frustration that there is nothing to be done. In fact, there are dozens of frustrations which, as I have said, have increased the number of mental patients in prisons. There is also that sense of frustration which is the result of an increase in the access to forensic services under "not guilty by reason of insanity" or "not criminally responsible" regulations in the Criminal Code. There has been an increase of almost 100% of these cases in Ontario in the past 10 years or so, since the new laws came into effect in 1992. Why? Because clinicians just simply don't act any more. They are hamstrung to act.

The second issue was the matter of which diagnosis. I think rather than going to a diagnosis we should concen-



trate on symptoms—the stories demonstrate that it is the symptoms, regardless of the diagnosis. A person suffering from acute manic excitement may also be experiencing a tremendous number of delusions or hallucinations. Delusions and hallucinations are not the defining factors or diagnostic factors for schizophrenia. It is the symptoms that we are worried about as opposed to a diagnosis or a label.

The last question was?

**Mrs McLeod:** Limitation on therapeutic interventions.

**Dr Arboleda-Flórez:** Limitation on therapeutic interventions is the limitation on clinicians as to the range where they could intervene. I say there is an obligation for them to come up with an adequate, appropriate treatment plan for the particular person. The legislation has protections included which also limit the therapeutic interventions. I don't think that under this legislation a clinician could order a lobotomy. I don't even think that a clinician could order electroshock therapy under this legislation, mostly because this is not given on an outpatient basis.

There are limitations on the therapeutic interventions, and no, they do not have to be the acute, heavily dosed anti-psychotics. There are other possibilities. Those are the limitations that I believe are included in the legislation.

**The Chair:** Thank you very much, doctor, for coming before us and sharing your expertise with us here. We appreciate your taking the drive up from Kingston.

## EASTERN REGIONAL NETWORK

**The Chair:** Could our next group, Eastern Regional Network come forward, please. Welcome to the committee. Good morning. We have 20 minutes for your presentation. It's up to you to decide between an actual presentation or question-and-answer period as you see fit.

**Ms Lisa Leveque:** My name is Lisa Leveque. I just drove from Lanark county. Hi, Brad; I recognize you. To tell you the truth, it isn't one of my strengths to be speaking to a group of strangers even though I've done it before. I'm not defending a thesis. I haven't put a whole lot of time into everything we would want to say. Of course, we have to limit ourselves in time. I'd much rather be bowling with the consumers at our project simply because it's easier than this, but I am going to get through this.

I'm the coordinator of the Mental Health Support Project of Lanark, Leeds and Grenville, a project for consumers of mental health services. This project was conceived of and developed by consumers and is managed by a board of directors and three staff members, including myself. All of us are consumers. We provide a support network for people with mental illness. Some of the services we offer include weekly support group meetings; individual outreach; social, recreational and educational activities; and consumer advocacy. We find ourselves in a position of support in terms of just helping

these individuals navigate their way through some of the difficulties in life.

We're one of approximately 58 consumer initiatives which are funded by the Ontario Ministry of Health. Our funds are managed and dispensed by a flow-through sponsor agency. We are very fortunate to have the North Lanark Community Health Centre as our sponsor, and when our project can fully demonstrate that we can provide sound governance of all features of our program, we will be going toward the path of independence.

My colleague Gary Holmes and I are here today as representatives of the Eastern Regional Network, so of the 59 projects we represent 10 in the eastern region of Ontario. This is the second round of consultations I've participated in regarding changes to the Mental Health Act and the implementation of CTOs and other matters. I can only imagine that this increases the likelihood that my feedback truly matters to all of you. I'm going to take five minutes and pass the next five over to Gary.

Our concerns, points to consider and recommendations: Health and long-term care minister Elizabeth Witmer has stated we are now following through on the Blueprint election commitment to make sure that people with serious mental illness who pose a danger to themselves or others are getting the treatment they need. In fact, I think most of us believe it would take a madman to allow dangerous people to be running in the streets, so we are certainly not advocating that.

Community treatment orders, however, as one of the tools being considered in Ontario, have been implemented in three other Canadian provinces and have been applied to a very small number of mentally ill individuals. We'd like to point out that in 1998, New Brunswick considered implementing such laws as CTOs, but after a provincial consultation like the one we're at here, they decided to put greater emphasis on community programs. So we have three provinces that have gone ahead with CTOs. New Brunswick gave it second thought after the consultation and have changed their minds, so it is possible that not all of this will go through.

We suggest that while CTOs are intended for a small number of individuals who are too sick to realize the implications of not being treated, the vast majority of consumers are still underserved in regard to other community supports. In particular in the rural area, of which I'm a part, local psychiatric care is not available to us as of yet. I believe that the government is working to improve those services.

Consumer programs such as ours and others in this province which have been proven to help people gain and maintain mental stability are allotted less than 1% of all Ontario mental health dollars. I think that's a really important figure that we'd like to put on the table here: less than 1%. This is inadequate when compared to the assumed cost of developing, implementing and monitoring CTOs. In the government's attempts to monitor our mental health system, we believe this is an insufficient use of funds.

Other questions and concerns regarding CTOs: Many mental health providers and consumers, including our-



selves, believe that the current Mental Health Act is more than sufficient to deal with the more seriously ill members of our society. The problem that has arisen is that with the increasing closures of psychiatric beds, psychiatrists have increasingly been prematurely releasing their patients before the case goes to the Consent and Capacity Board. So, in fact, there is already a mechanism in place to keep patients for extended periods, but it has been compromised by bed closures. In this context, CTOs appear to be an ill-conceived and expensive band-aid solution.

How will we measure if CTOs will actually accomplish any of their therapeutic goals? I don't think I've heard that at any of the discussions. What if we discover that in fact they have the reverse effect of driving mentally ill people underground, where their illness will remain untreated and in isolation? I think we'll be in deep trouble there.

Finally, it is our belief that one cannot enforce therapeutic treatment, and I think that is the gem in this part. It's antithetical to the features of healing, which are acceptance of one's illness and willingness to get well. Studies have repeatedly shown forced treatment to be ineffective.

I'll move away from CTOs now and go quickly into problems with the proposed amendments as we see them. The proposed removal of the term "imminent" from the Mental Health Act, combined with removing the requirement for police to observe disorderly conduct—as you all know, before acting to take a person into custody—we believe is fraught with social, moral and legal implications that I don't think we can imagine at this time. Countless studies have shown that it is extremely difficult to predict the inevitability of dangerous or violent behaviour. In the current Mental Health Act, the word "imminent" at least helps to facilitate this prediction. For example, if someone is brandishing a knife, that is a pretty good indication there could be harm.

The fact that studies have repeatedly found that mentally ill people are most likely to be victims rather than perpetrators of violence is of no consequence. These studies are apparent. I think the social myth gets perpetuated, and certainly government policy helps to perpetuate that. This pervasive stigmatizing of the mentally ill is dangerous and one of the major reasons people don't seek treatment. Who wants to be considered crazy, let alone crazy and dangerous?

In 1998, Dr Bruce Link commented in the Archives of General Psychiatry—this is a very important quote that I'd like you to hear—"To date, nearly every modern study indicates that public fears are way out of proportion to the empirical reality. The magnitude of the violence risk associated with mental illness is comparable to that associated with age, educational attainment and gender." This would be somebody in the field of psychiatry saying this.

1200

The removal of the word "imminent"—this is another concern—would nullify or at least impair any appeal

process because even minimal proof from officials will no longer be required. The arbitrary loss of freedom initiated by a police officer or other person will need no presentation of evidence in a court of law, unless you can tell us differently. Under the new legislation, a person could be taken into custody and detained purely on a subjective basis in the absence of any overtly harmful or disorderly behaviour. Unlike a criminal or a provincial offence, the authorities will not be called upon to defend their actions by way of proof and evidence because they don't need the evidence. This should never be allowed to happen in a democratic society.

We believe that the expanded committal criteria are also potentially problematic. Two of the new criteria include the need for treatments and that the person would benefit from treatments. We find that to be alarmingly vague. It actually widens the catch net that may ensnare those who are in a situational crisis and may not need to take up the precious services that are left.

These proposed changes are all the more insidious by being unveiled in the patients' new bill of rights. I think this breeds a bit of cynicism among the consumer population and those of us who work in the field. We don't seem to conceive of these changes having the potential of violating the rights of individuals. Moreover, any medical re-examination requested by the patient can only be done by the original attending physician. The patient will now have the right to not choose the examining physician nor seek a second opinion. You have the right to be told you're crazy twice over by the same physician. How emancipating. I don't mean to be snarky, but I think I was getting a bit upset at this point.

My part of the conclusion: We believe there needs to be a continuous focus and dialogue about improving community mental health services during the times between tragedies as opposed to only afterwards. We believe we can truly honour Brian Smith in other ways that address the root causes of mental illness and social suffering. For example, what about a sports scholarship for individuals with mental illness? What a way to honour Brian Smith.

We need consumer legal advocacy in our communities to ensure that these new changes do not infringe on the rights of consumers who are already the most vulnerable of our society. We request that more mental health dollars go into consumer initiatives and less into a parole-type system of monitoring the mentally ill. We hope that after the bricks and mortar are taken care of a little more money might flow, and we encourage this government to follow the common sense of New Brunswick's display of courage in putting greater emphasis on community programs and not caving in to the reactionary and hasty decision-making that appeases some and benefits even fewer.

Gary Holmes is my colleague.

**Mr Gary Holmes:** A lot of ground to cover in the 10 minutes remaining. Basically I'm going to go through a few things and it's rather a bit of a checklist of what I see as some of the problematic highlights.



Overall, I'd say first off, at the outset, Eastern Regional Network is against community treatment orders, as is Ontario CMHA. I've read the Ontario CMHA recommendations and they seem to make a lot of sense in terms of their highlights as well as the legislative changes that would be necessary if you're still going ahead with it. But I see it as a very flawed document and I think it should be stopped. As CMHA Ontario said in the beginning, if CTOs were to come into Ontario, at least adopt the Saskatchewan model. They were designed for people who have had involuntary times, as well as the revolving door concept, in and out of hospital.

I myself have been in that category. There have been abuses of the Mental Health Act that we presently have. I went to a review board once myself, represented myself and was certified involuntary. The next day I found a job and was working. There's something wrong with a system that can be as imbalanced as that. Abuses occur. A lot of these changes will allow and broaden the potential for further abuses.

Every time I did get out of hospital—and it's been 13 times—the supports haven't existed in the community. It's much like an empty glass. The legislation isn't going to provide more housing. It's not really addressing the severe poverty that people are under. There hasn't been an increase in financial assistance since 1992 and there are cost-of-living problems.

We have a very restrictive drug plan in Ontario. I've been on the task force for Ontario CMHA on that. That report will be out shortly.

The "imminent" clause is a problem. CMHA Ontario recommends three months. I still see that as a long time frame. Will that be at the expense of hospital beds that are already inaccessible to people who are voluntarily trying to get into hospital? Here we have a situation of, how can we get more community mental health services in place? CTOs have the potential to perhaps create a further log-jam or a more hospital-based system, and then mental health reform won't proceed.

Some \$351 million was the target set in 1995 for transitional funding for mental health reform. That money is still needed, as well as about \$226 million for housing and supports for housing. Consumer-survivors want and need availability of services and timely access to services. That really doesn't happen.

In terms of leaves of absence under the Mental Health Act, there's a problem. It really hasn't even been that well known. Second, it hasn't been used because of issues of potential liability. The hospitals don't really want that. There's no renewal beyond three months. It could be a well-versed amendment to the existing Mental Health Act to change it so there can be renewal beyond three months so that people can have a trial period in the community.

The Health Care Consent Act and some of the legislation in the CTOs right now is contrary in the way it's defined. For example, community treatment orders and physician orders are not necessarily the same thing although they're spelled out currently in our existing acts.

I don't see how physicians will be able to provide ancillary services such as housing, case management and things like that. Here in Ottawa we've been asking for that kind of thing. We've had additional funding but not always to the level requested and not always to the type of community mental health services that we've wanted. ACT teams, which seem to have been more funded and more resourced, rather than let's say the strengths model of case management, aren't necessarily the preferred method. I know people working on ACT teams and they don't even see why CTOs would be necessary for their clients because they are monitored so much. They do receive medications.

Another aspect in terms of medications is, what happens if someone is forced on medications but they're allergic to those medications? Medications themselves aren't a panacea for everyone. They don't always work. I've had to be on a number of different medications. Diagnostic categories change often and medications don't always work. There are often terrible side effects. And there's a lack of access to alternatives to medications, other holistic alternatives that might work, not just for consumer-survivors but even other ethnic groups who find that hard.

#### 1210

Bumping of services is a potential as well. Will people voluntarily seeking services right now be bumped in favour of people who are mandated to be on a community treatment order? This is a real reality that can happen unless additional dollars flow to the community level where most of us live. "Apparently incapable," that means to be stricken from the record—apparently has to be incapable or capable.

I have a concern about monitoring costs. If it's set up, you have an ACT team, you have a physician, you have a hospital and several social agencies. The tracking of that is going to cost quite a lot of money and will also result in perhaps less money going to the needed supports, the real supports for most of the consumer-survivors who don't even need CTOs, and those supports don't exist like affordable housing, subsidized housing and proper income or employment supports.

I also recommend that there be a freeze on CTOs. If they do go ahead as the election promised one year before, they should not go into effect until existing services are put in place in the community, properly developed and evaluated, coordinated and integrated.

It's been seen that diagnosis and disorder studies by Penetanguishene hospital don't predict dangerousness. It's a predictor of dangerousness. The Marshall study in fact shows, as you're probably aware, that we're no more dangerous than the rest of society, yet we're basically discriminated against at the outset as Ontario citizens. I myself find that a real travesty. Having volunteered for years with mental health reform on numerous committees, at the Canadian Mental Health Association and consumer-survivor initiatives, and even receiving the community action award from the Ontario government with Premier Harris's signature on it, I think it's a real



slap in the face for most of us who do a lot of good volunteer work and are contributing members of society.

Furthermore, forced medication, as was previously mentioned by Lisa, really doesn't work. The situation of a community treatment order is going to erode the trust that is necessary, that needs to be developed. It usually takes at least a year for a mental health worker to establish a good rapport and trust. Without that trust, people aren't going to come forth and reveal the real symptoms or perhaps even the level of dangerousness they might be contemplating, either suicidal to themselves, or to others in terms of dangerousness. It's a real erosion in terms of finding out about dangerousness, as well as even in terms of recovery for people.

I'm going to sum up and leave it open for a few questions here.

Lastly, I think there need to be independent rights advisers and advocates. A two-year review will have to take place if CTOs are implemented, and definitely, as all the consultations previously stated here and across Ontario, a lot more money is needed in the community with community-based mental health supports and services and proper housing, addressing the real problems of people living in the community with adequate housing and income and employment supports.

I'll leave it open to your questions, and thanks for listening.

**The Chair:** Thank you both very much. Actually we've gone over the 20 minutes.

**Ms Leveque:** You have 30 seconds for questions.

**The Chair:** I don't think any of my colleagues could state their riding name in 30 seconds, never mind pose a question and get an answer, but we do appreciate your taking the full time to share your views and make the suggestions you have. We very much appreciate it.

Committee members, just before we break for lunch, you may recall one of the groups that had presented to us earlier, the Ontario Council on Alternative Businesses, had mentioned this video. Rather than try and put together a screening for the whole committee, if you like, we could just put it in rotation and if each—

**Mrs McLeod:** Am I to be given the responsibility for that video?

**The Chair:** Ms McLeod now has custody of it.

**Mr Holmes:** That video is also available at the National Film Board, and most CMHAs have it.

**The Chair:** Thank you. That's now available for everyone. With that, we're going to break for lunch. The committee will adjourn until 1:30.

*The committee recessed from 1216 to 1333.*

#### ROYAL OTTAWA HEALTH CARE GROUP

**The Chair:** Good afternoon and welcome to the committee as we continue our hearings on Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996. Our first presentation this afternoon will be from the Royal

Ottawa Health Care Group. We invite them to come forward to the witness table. Ah, just one today.

**Mr George Langill:** Actually, Mr Chairman, there are two. The other half of this presentation is out in the hallway with the media right now.

**The Chair:** Very good. We have 20 minutes for your presentation, and it's up to you to divide between either a presentation or a question-and-answer period as you see fit.

**Mr Langill:** We would like to make a presentation. We have submitted a written brief to members of the committee and sufficient copies to pass around. That certainly is the heart of our presentation.

Perhaps I could start by introducing myself. I'm George Langill, CEO of the Royal Ottawa Health Care Group. To my right is Dr Marv Lange, the clinical director at the Royal Ottawa Hospital. We had hoped to have Dr John Bradford, who is the clinical director of forensic psychiatry, also available today, but unfortunately he's been detained at a trial in Toronto and couldn't be here.

Let me start by saying that we certainly appreciate this opportunity, which as you know has particular relevance to all of us from this region because of this bill's association with Brian Smith and following similar events over the last few years in our community. We believe very strongly that the reasonable availability of mental health assessments and treatments, like all other medical and clinical services, is a societal expectation and a standard worth achieving in our society.

I'd also like to take this opportunity, if I may, to recognize the initiative of this government in the area of mental health reform. They have shown that they are prepared to make the necessary decisions to move reform's implementation in this province through action like this legislative review and update to reflect what we believe is a very sound policy platform in making it happen, and also through decisions that we feel have certainly taken the courage of your convictions around that policy through decisions such as the creation of these mental health implementation task forces and through the divestment of the provincial psychiatric hospitals and their further rationalization within a reformed system. We feel that has to be recognized for its initiative, for its very forward thinking as we move to reform mental health care.

We'd also like to commend and recognize the outstanding advocacy of Richard Patten in his long-standing pursuit of a reformed mental health system and a more responsive mental health legislative framework.

Before asking Dr Lange to comment on the bill from a broad clinical perspective, may I point out one thing that I think has to ride very high over the implementation not only of this legislative framework but of reform to our mental health system; that is, that at the core of the reformed system is an accepting community, a community that understands, a community that has empathy, a community that is moving with the times and with reform. This emphasizes the very strong need up front and continuously to have a strong investment in public



education. We ask you to consider that not so much as a legislative issue but as an implementation issue as the government moves forward in this regard with reform.

The same thing will be necessary with the various professionals who are expected to operationalize this legislation. Academic health science centres in this province—and there are five of them—should be mandated and appropriately funded to implement, evaluate and maintain effective ongoing systems of education and knowledge support for the professionals working with such legislation in the respective regions. We feel that's absolutely mandatory here and we've learned that through the experiences of prior changes to mental health legislation over the years, that that education, that available support within regions to professions, becomes absolutely very critical.

I would add to that a consideration that these academic health science centres, because of their academic and research mission, should also be mandated to develop on a province-wide basis, but to be implemented regionally, some form of system of evaluation and research of these changes and their impact on the effectiveness of mental health service delivery.

I'll certainly leave you with those thoughts that obviously are more post-legislative in terms of implementation but that will be very critical to ensuring that the reform program and the legislative implementation goes smoothly and is maintained as a rigorous regional effort. What I'd now like to do is call on Dr Lange to make comments to you from his clinical perspective as a clinician who deals with issues day to day in our organization.

**Dr Marv Lange:** Thank you very much for giving us the opportunity to speak to you. We certainly support the amendments to the act, which we think have to strike a balance between the rights of the individual and the rights of families and society at large. We believe that the individual must have the right to mental health, the right to treatment when mentally ill, and the right to safety.

Too often persons become mentally ill with an illness which impairs their judgment, leaving them either not to seek treatment or to reject treatment when it is offered. The tragedy is that often these same persons deteriorate, as a result of their illness, to the point where they become a threat to themselves or to others as a result of their illness.

The course of their illness may seriously affect their physical and social well-being. Their social deterioration often leads them into dangerous situations, with victimization by criminal acts, substance abuse and exposure to climatic extremes. Too often, seriously mentally ill persons suffer deterioration of their health, severe injury or even death. This is because of their inability to care for themselves.

1340

People with serious mental illnesses are suffering even when they do not pose a risk to themselves or to society. The lack of insight caused by the illness results in a loss of judgment that effective treatment can alleviate their

suffering. Ignoring such people until they pose a danger means that we have deprived them of their right to mental health.

At hospitals we frequently speak with families who tell us about family members who are clearly ill and who are deteriorating but who refuse treatment. Too often these are patients who have discontinued treatments which were effective and who lacked the judgment, as a result of their illness, that continued treatment is necessary for their recovery.

It seems a tragedy that we have to wait until these people pose a risk to someone before we can intervene. We believe that the right of the family members to have access to treatment for their loved ones cannot be ignored.

With the steady movement to treatment in the community, we see community treatment orders as being one more modality in the continuum of care for persons with serious mental illnesses. We now must keep some patients in the hospital for longer periods of time because of the recurring problem with non-compliance with treatment. In selected cases, we believe that community treatment orders will offer a less restrictive setting for treatment of some people who could function outside of the hospital if they felt some compelling reason to continue a proven treatment plan. We believe that with proper monitoring and close follow-up, in selected cases we could treat some recurrently ill patients in a community setting which more closely reflects the ultimate goal of treatment, which is to live in the community with as much independence as their illness will allow.

Thank you very much.

**The Chair:** Thank you. That's left us about six minutes for questioning, about two minutes per caucus. In the rotation, the first speaker last time was NDP, so Mr Clark or Ms Munro, if you have any questions.

**Mrs Munro:** Thank you very much for coming here today and giving us some insight into this. I wonder if you could expand a little on the issue you raised initially, that of education, because clearly, when one embarks on what is essentially a new direction in terms of the way in which this bill is structured, that becomes a particularly important issue. You mentioned the need for both public education and education for health care professionals. I wondered if you could give us some indication, in either of those cases, of the kinds of things you think would be most effective.

**Mr Langill:** Perhaps I can start, but I'm sure Marv has comments too.

In mental health, the legislative procedures and practices we work with are like a surgeon or another physician having to work with certain procedures. If you're changing that technology or those procedures, there has to be a proper orientation, there has to be proper education, there has to be proper evaluation of how these are implemented.

The academic health centres in our various regions have that mandate, not only for medicine but for the other clinical professions, whether it's in the formal sense of



students who are going into these professions or continuing education. We see a necessity here of ensuring that built into the implementation plan are those educational programs that will target the health professions, the police, and others who will be integral to ensuring that the proper procedures and the proper manner of interpreting these procedures are put into effect and that there is some form of evaluation. We're simply saying that this should be somehow layered into the mandate and mission of these academic health science centres.

**Dr Lange:** I would agree with that. To add to that, the people who use our service also need to know what the amendments to the law are. After all, it does affect them very definitely.

**Mr Patten:** Thank you for coming today. You talk in your paper about the fears of some members of the community, particularly the consumer-survivor community—and, by the way, some representatives of general hospitals—saying that with the expanded criteria in this proposed bill, we'll increase the pressure, they say, on general hospitals and they think on all services. Unless there's a greatly increased programmatic increase in volume at almost every level, this cannot be done with the resource level at the moment. What would be your response to that? In other words, even at the ROH, do you have excess capacity? I would think not.

**Dr Lange:** No. That's pretty straightforward. There's no question. Any of the papers and submissions we've read on this whole issue indicate a concern that a proper resource base has to be in place, a set of community supports, including the backup of the hospital, to make this work; otherwise, it becomes an academic exercise.

The issue of the impact of this legislation—we have not a whole lot of experience to go by. Certainly the Saskatchewan experience, which you're very familiar with, indicates that if the criteria are properly adhered to, the volumes are not that high. If anything, it can act to facilitate the re-entry of the individual into the community, the maintenance of the individual in the community and the avoidance of the revolving-door syndrome, which could in fact take pressure off the hospital system, but inevitably it will put certain pressures on the community-based system to provide those supports.

Again I would reiterate the importance (1) of education, making sure everyone has the right information and knowledge base they're working from, and (2) a system of rigorous evaluation that gives us the answers to some of these things, Rick, in time and due course so that government and others can evaluate the implications and make adjustments at that time. We're not as concerned about that particular agenda being the most likely to occur if those things are put in place.

**Mr Patten:** Some people are suggesting—I don't share the view, but I'm hearing it—that the leave provision in the existing Mental Health Act is a form of a community treatment order and can and should be used but it seems not to be. What's your response to that? In other words, if we just employed that option, it would be there; we wouldn't need the community treatment order program we're proposing.

**Dr Lange:** I don't agree with that, because the leave provision is something quite different than what we're talking about. Generally, what we're talking about here is people who are recurrently ill or people who, on discharge from hospital, discontinue their treatment. I don't think the leave issue from hospital really addresses that issue.

But to go back to your first question, I don't think this bill is going to increase the incidence of severe mental illness in Ontario, so I don't see that that should have a huge impact on resourcing. What may happen is that we may have to assess more people. I see that as a positive thing rather than a negative thing, that when families are very concerned about someone, they have some way of getting that person to at least have an assessment. The assessment may come to the conclusion that this person does not need to be in hospital, but at least there is some reassurance for the family to know that their family member has been assessed.

**Mr Marchese:** Thank you for the presentation, Mr Langill and Dr Lange. Just to agree with you quickly about a few points you made before I get to two quick questions, first of all on the balancing of rights: It's a concern of mine all the time, because we tend somehow, when we do reform of one kind or another, to go to one extreme and then we go to the other extreme. Part of our attempt, it seems, in terms of your comments at least, is that we're trying to find that balance, and that's always the challenge. To agree with you on education, we always talk about that. Almost with every bill invariably someone says we should put into what we are doing some resources for educating the people who are affected or the people who are going to provide the treatment and so on. We say it and we never do it, we never really do it. It's a failing, I believe, on our part. It should literally be built into everything we do, that there's an education component and resources allotted to it. I wanted to agree with you and tell you that it's usually a failing of ours, even though we agree.

On the point of evaluation, sometimes it happens, sometimes it doesn't. It usually happens later, when we're looking for reform, and then we do the evaluation—but much later.

In terms of questions, a Dr Ty Turner, chief of psychiatry for St Joseph's Health Centre, makes this comment: "Why would police apprehension be facilitated and why would the committal criteria be loosened up unless there was an objective to increase the flow of the mentally ill people back into hospital? The clock has been turned back and people will be taken out of the community and detained against their will. Flowing people back into hospital makes no sense when, at the same time, beds that were once available are being taken out of the system. Many beds have already been taken out and many more will follow." That's the comment he makes. What is your response to that?

1350

**Dr Lange:** I think that's a two-part thing. It addresses resourcing on the one hand. I agree with George that resourcing is always an issue for us. But the first part of



the question is about police. Some people have the perception that the police have nothing to do in our society but take people they don't like or who annoy them to the hospital. My experience has been that actually they're quite busy and their numbers are reduced, as always, and when they bring someone to the hospital they usually bring them because they have significant concerns. I can understand that loosening the rules might lead to more people being assessed, but my experience has been that we also need to educate the police so they have an understanding of who they need to bring.

**Mr Marchese:** The previous language was that the police personally observe disorderly conduct and now it's "reasonable and probable grounds." It's on the basis of this definition that there might be some greater probability that people will be put away. I know the cops don't like to do those things, but if you change the definition, doesn't it make it more probable that more people will be detained?

**Dr Lange:** People may be brought for assessment. Being put away is another issue.

**Mr Marchese:** Of course. A quick question: The health professional issuing a CTO does not have to be a psychiatrist, according to this bill. Do you think that's a good thing or bad thing?

**Dr Lange:** In most cases, it should be a psychiatrist. Certainly the Saskatchewan experience has been that CTOs are not used very frequently, because there needs to be a treatment plan made, and in most situations, a treatment plan for somebody with a serious mental illness should be done by a psychiatrist.

**Mr Marchese:** So it would be a problem if a CTO is done without—

**Dr Lange:** It's a potential difficulty, yes.

**The Chair:** Thank you, gentlemen, for coming before us here today. We very much appreciate the perspective you've brought to the hearings here.

#### SHEILA DEIGHTON

**The Chair:** Our next presentation will be from Ms Sheila Deighton. Welcome to the committee. We have 10 minutes for your presentation, to be divided as you see fit.

**Ms Sheila Deighton:** Thank you for having me here today and for listening to our story. I am a family member. My husband has schizophrenia. On the surface we seemed like any other family living in the 1990s, two working parents with three teenage sons who were very active in sports. Our plate was full. We had more than our fair share of problems, but we learned to cope on our own with each crisis as it arose, with little outside direction or support, because mental health professionals failed to appreciate the serious consequences of living with untreated mental illness. It would not be until a life was taken away from us that I would realize how bizarre our life had become. Our family was different. Both my husband and son suffered from untreated mental illness.

My late son Al desperately needed psychiatric care in the last years of his life. He was a very troubled boy who threatened and attempted suicide many times and very nearly succeeded on one occasion. His response to life's adversities was often aggression towards himself and others. Al made his second, near-fatal, suicide attempt in August 1993 by jumping 30 feet from a concrete dam. He sustained life-threatening injuries and was rushed into surgery. Five hours later, we were told he had survived. We were so grateful: Our son was alive and now he would get the psychiatric help he so desperately needed. We had hope, a starting point, or so we thought.

But Al denied being suicidal throughout his entire hospital stay and he was not considered to be a danger to himself. In view of his suicide attempt, admission to the psychiatry ward was offered and recommended by the psychiatrist treating him, but Al refused to go. As none of the required criteria were met, Al was not deemed to be certifiable under the Ontario Mental Health Act and thus there were no legal grounds to keep him in hospital. Al was 16 years of age and as such could legally decide for himself whether he stayed in hospital or left. The fact that Al's grandmother suffered from schizophrenia and that his father was under the care of a psychiatrist carried very little weight. Eight days later he was discharged.

One year later, in July 1994, I would return to the emergency department with Al, this time following an assault on his father, suicide threats and property damage to our home. The OPP were called by my husband and the property damage and physical assault were documented. Reluctantly, Al agreed to go to emergency, where he again expressed suicidal thoughts of shooting himself with a gun. As the day wore on, Al began to display some insight into his present situation and agreed to be admitted to hospital. But his request was denied. The attending psychiatrist felt that he was no longer suicidal and he failed to meet the dangerousness criteria for admission.

My husband, Alistair Deighton, I would discover much later, had a long history of serious untreated mental illness, as do many members of his family. His childhood was a nightmare which left him profoundly traumatized as an adult. But with the support of his family, he coped responsibly and successfully with his condition for most of his life. But even though he was continuously in the care of a psychiatrist, his deteriorating condition was not properly recognized or treated, putting many lives at risk. We were a family in crisis. What was it going to take to get the treatment our family needed?

On January 30, 1995, tragedy struck our family. My husband, untreated and struggling to deal with our son's behaviour, lapsed into a psychotic state. He shot and killed our son Al, who was 18 years old at the time. Arrested and charged with murder, Alistair Deighton was held in jail for two months until a bed in the forensic system became available. Six weeks later, he was diagnosed with schizophrenia and major affective disorder.

Justice was served, and effective, responsible medical treatment, through the forensic system, was provided our



family by our legal system, which on March 8, 1996, found Alistair to be not criminally responsible due to a mental disorder in the tragic shooting death of our son. It took a criminal offence to finally get the treatment our family needed. Unfortunately, our case is not the exception. It has become the norm. For it still seems the hardest thing to do in our society is to have mental disorders recognized and treated, even after they have ended in tragedy.

I applaud the government's efforts to amend the Ontario Mental Health Act and the Health Care Consent Act and support Bill 68, Brian Smith's law. Would Bill 68 have made a difference in our particular situation? We will never know, but what we do know is that the current legislation failed to protect our family, the people it was designed to protect.

I would recommend that a system be put in place to monitor and evaluate the effectiveness of the proposed amendments; that we ensure adequate supports are in place for implementation of the community treatment orders; that we launch a public awareness and education program on the amended legislation; that we change the name of "community treatment orders" to "community treatment agreements"; and that involvement of family members is essential.

I would also recommend that this government needs to look at developing a children's mental health act, an act which recognizes the need for early intervention. In youth, symptoms of mental illness often emerge as behavioural problems, which are too often ignored, it seems. Many distraught parents are not aware of the symptoms of mental illness in adolescents and children. Legislation must be established that sets standards of care for the people it is designed to protect, children and their families.

**The Chair:** Thank you, Ms Deighton. That leaves us with two and a half minutes. Recognizing the realities of question-and-answer, I'll allocate that time to the Liberal Party.

**Mrs McLeod:** Thank you very much for being with us today and for telling us your story, which I'm sure must be very difficult to retell. As I hear your comments and read your submission, my sense is that in saying how this law could help other families that might face a situation similar to the one your family was in, it would be through ensuring greater access to community treatment, the kind of treatment your husband should have been able to access. Is that a fair read of what you believe this will do?

1400

**Ms Deighton:** There are a number of things. Changing the criteria from dangerousness to need for treatment is extremely important. The psychiatrist treating my son recognized that he could benefit from treatment admission to the psychiatric ward. He spent four days in intensive care and four days recovering from surgical injuries, because he had a massive incision. He had hemorrhaged. They recognized that this was a boy who had a genetic history of schizophrenia but were restricted by the cur-

rent Mental Health Act, because he at that time was not considered dangerous.

**Mrs McLeod:** Even though he was agreeing to be admitted to hospital?

**Ms Deighton:** The second time we were told: "He is not suicidal right now. He's not a danger. Take him home." There was no support for our family.

One of the things that happened once we went into the forensic system—which is very similar to CTOs: my husband has an order, he came home in February 1997 and he's living at home—is that there's support for our family. My husband has not been re-hospitalized. He sees a psychiatrist according to his order. He's taking his medication. There's therapy for him and there has been therapy and support for us. There's not a lot of community services available, but those essential supports that were necessary for us as a family to survive this kicked in after we endured this tragedy.

**Mrs McLeod:** What I think I hear you saying is that without that element of dangerousness, which your husband hadn't demonstrated up until the actual incident, it would have been possible to have him in treatment, that a community treatment order might have been accessible as a way of getting your husband into treatment, even though he wasn't recognizing the need?

**Ms Deighton:** I asked for an investigation into the standard of care, and the college found that the level of care provided by the psychiatrist failed, didn't meet their standard. The psychiatrist said he could not have committed my husband prior to this offence, because even though he was very ill, he was not considered to be dangerous. He had given no evidence.

**The Chair:** Thank you, Mrs McLeod. Thank you very much, Ms Deighton. We very much appreciate the personal perspective you brought to us here today.

#### SCHIZOPHRENIA SOCIETY OF ONTARIO, OTTAWA-CARLETON CHAPTER

**The Chair:** Our next presentation will be from the Schizophrenia Society of Ontario, Ottawa chapter. Welcome to the committee. We have 20 minutes for your presentation today, and, as you've heard me say before, to be divided as you see fit between a presentation or questions.

**Mr Leonard Wall:** Thanks very much, Mr Chairman, and good afternoon, ladies and gentlemen. My name is Leonard Wall. I'm the president of the Schizophrenia Society of Ottawa-Carleton, and I'm here to support Bill 68 today. My cohort is Ian Chovil, who is a consumer-survivor and will speak for a few minutes on his thoughts.

Today I'd like to speak not only as the president of the Schizophrenia Society of Ottawa-Carleton but as a father of a son who has schizophrenia, and also as a spokesperson for the hundreds of families who have called our organization in the last year or so, crying out: "Help me. How can I get my loved one into care? I can't get them into the hospital. They can't get treatment. They're ill,



they're suffering, they're deteriorating and they're going to die." The doctors recognize that these people are very sick and need treatment, but because they are not a danger to themselves or to others, they cannot be admitted to hospital. And if they choose not to take their medication, that's OK, that's their right.

Families take their loved ones home, watch them deteriorate, get sicker and sicker, episode after episode, until they deteriorate to the point where they become a danger to themselves or to the community, putting themselves at increased risk of homelessness, suicide, substance abuse and criminalization. How do you tell these parents, husbands, siblings, people like the people sitting back there—and I know every one of these family members. They have a story they could tell as well. How do you tell them the doctors, the hospitals, the community workers are restricted by law from doing the right thing?

Too often families have to resort to charging their ill relative with a criminal offence. Only under the forensic system will they receive responsible, monitored care. Imagine having to criminalize your loved one in order to access responsible medical care, a solution which often tears families apart, alienates the family from the sick relative, sometimes permanently.

Over the last two years I have talked to a number of people who suffer from schizophrenia and today are stabilized on medication. When asked, "If you were to suffer a relapse, stop taking your medication and become very psychotic, would you like to be involuntarily treated?" 100% say yes.

The schizophrenia society recognizes that in a civilized, caring, responsible, and compassionate society, mental illness is a community responsibility and is viewed as an illness which requires medical treatment. Legislation must be amended to reflect the role of the community when treatment is provided in a community setting. Bill 68 recognizes that medical treatment in the community will fail without compliance on the part of the individual and as a consequence of not receiving continuing treatment or care and supervision while living in the community.

In addition, over the last decade coroners' juries have made recommendations which urge amendments to Ontario's current legislation to include community treatment orders, which permit treatment of persons suffering from severe mental illness while living in the community. The schizophrenia society supports community treatment orders, which are designed to treat people who are at risk in a community setting.

Individuals who qualify for these agreements are the sickest of the sick. They have a history of being in and out of hospital, stabilized on medication, released into the community without proper support and follow-up, failing to take their meds and beginning a downward spiral into hell. Eventually they end up on the streets, in our shelters, in our jails or back in the hospital.

They make up 35% of our homeless population. We pass them daily. We've allowed ourselves to become

complacent, to ease our conscience by saying, "We have laws that protect the rights of individuals to choice." But what we cannot allow ourselves to forget is that they are someone's son or daughter or mother and that no family is immune to this illness. This is a major medical illness, with major, far-reaching impacts. This province has in excess of 200,000 people with severe mental illness. Of this total, it is anticipated that some 400 to 500, or 1/4 of 1% of this population, will be eligible for a community treatment order.

The schizophrenia society appreciates the concerns expressed by the anti-treatment advocates regarding the implementation of community treatment orders in Ontario. The rights of the patients are paramount. But what about the individual's right to treatment? What about their families? Families are often the silent and forgotten victims of untreated mental illness. Families impeded by the current Ontario Mental Health Act are forced to watch their loved one deteriorate to the point where a shelter for the homeless becomes their only source of community support and involuntary treatment is provided only when they have met the criteria for treatment: evidence of dangerousness.

I have an addendum to my package, which is a statement from a young woman from Deep River, by the name of Barbara Shreeve, whose brother killed his parents recently. She couldn't make it today and I wasn't sure if I'd have enough time, because I wanted to have Ian have a few words, but I would like you to read that, if you would, if you haven't already. It's really heart-rending. This man suffered from schizophrenia for 20 years and lived at home with his family. I don't know how many of you realize that families are the institutions for approximately 65% of the people with severe mental illness, especially schizophrenia.

I'm going to ask the kind folks on this panel to deliberate very wisely, to listen to the words of all the presenters, but most of all to think of the impact on the lives of the people affected by Bill 68. See the pain, the suffering, the fear and the devastation of your constituents and be courageous. Have the understanding and the compassion to make sure that all persons suffering from severe mental illness have an act that recognizes the individual's right to treatment, the right to be well, and the public's right to feel safe.

Two recommendations, and I'm sure you've heard them before:

Ensure that adequate and appropriate community supports are in place. Treatment agreements will not work without them.

Change the name from "community treatment orders" to "community treatment agreements." Most of the consumers I've talked to don't like the word "order" but they agree that "agreement" is a more appropriate name. I would also like, as a concern, to suggest that early diagnosis, as well as education programs to promote prevention, are very important. That ties in with the fact that children with mental illness and their families are vulnerable and need protection and help.



We receive 500 phone calls a month in our office, which is a volunteer-run office for families in this city. They're asking for help. They're asking for information. And they're not all from families: they're from police forces, from social workers, from literally everybody saying, "Where can I get help for this person?" They're from business, they're from industry. This has never happened, except in the last couple of years, this volume. I will thank you very much for the time and turn it over to Ian.

1410

**Mr Ian Chovil:** Thank you for allowing me to speak here today. I've had schizophrenia for 25 years now and I'm going to restrict my comments to schizophrenia. It's the one I know inside-out, so to speak. I've been taking medication for the last 10 years, and each year on medication has been better than the previous year. Prior to medication, I was psychotic for about 10 years. Over that time period, I was homeless, I attempted suicide, I was in jail for a couple of nights. I remember planning to murder the man who was torturing me telepathically. You can't go to the police when someone is torturing you telepathically, because you don't have any evidence. I know that people in a psychotic episode are much more likely to be violent. I was and my friends were. I don't know if that holds true for people with mental illness generally, but people in a psychotic episode are having a lot of trouble maintaining contact with reality, and sometimes that reality makes demands on them.

Without medication, and I'm really echoing what Len was saying, people with schizophrenia will become homeless or they'll end up in jail if they are not re-hospitalized. It's as simple as that. I would have no objection to a CTO if I became psychotic again. I wonder why I had to lose 10 years of my life to an untreated psychotic episode in the first place. I had no idea I was ill during that time. For me, a CTO law is like a law requiring you to wear a seat belt. It's for your own protection, whether you agree to it or not. A CTO is even better than a law for seat belts, because it's a law for people who consistently get into accidents without their medication. It's as simple as that.

The people who object to this legislation, I have found, generally have very little awareness of what schizophrenia really is. They have no medical training, and I strongly object to their speaking on my behalf. They don't know what it's like to be psychotic. They don't know that psychotic episodes are bad for your health, that they essentially cause irreparable brain damage. With each episode and with each delay in treatment, the response to medication decreases and the individual becomes increasingly disabled for the rest of their life.

I'm really impressed with the research that has gone into Brian's Law, what I understand of it anyway. Someone really took the time to learn a lot about the dynamics of schizophrenia. It will be a great improvement on what currently exists and will help a lot of people with schizophrenia keep a better quality of life. That is something

that opponents of this bill don't really realize. Thank you very much.

**The Chair:** Thank you very much, both gentlemen. That leaves us some time for questioning here, about seven minutes, so if we can try to keep our questions and comments to about two and a half minutes each.

**Mr Marchese:** Thank you for the presentation. I'd just tell you, as a way of sympathizing with the problem, that my father died of Alzheimer's disease. You don't understand the disease, of course, until it happens to you, and then you realize the extent of the pain it causes family members, because we're all involved then in taking care of father. It was a tremendous sacrifice made by all, but especially my mother, who wanted him at home.

So the sacrifices are many for those who are affected by a particular problem, in this case schizophrenia. Although I've never had any member of my family affected by it, I understand what it means, based on the stories I hear.

I agree with your recommendation and the previous speaker's about changing the terminology from "community treatment order" to "community treatment agreement." Even the language itself sends a powerful message. An order is something you almost want to resist; there's something bad about the whole thing. I think "agreement" communicates a different sense of what I think many of you are trying to get at. I appreciate the language you are suggesting and I personally agree with it, even though I'm not the critic in this area.

Is there anything in this bill that you think may bring problems to other people, not perhaps to your concern in terms of those affected by schizophrenia, but others who may suffer from other kinds of mental illness?

**Mr Wall:** I don't think so, for the simple reason that people who are mentally ill come in sort of two classes: One class has a broken brain; the other one has a brain that doesn't work on a temporary basis. The ones where they have a broken brain can't speak for themselves. That's why you have so few people with schizophrenia talking to you or listening or being the advocates in all these consumer-survivor organizations. But the fact that we're going to allow people to get treatment quicker is important. That's what this law is all about for me, and for the consumers. I speak for the ones who called me a Nazi at the Brian Smith inquest who now support this bill.

**Mr Clark:** Thank you for coming. I really appreciate it. As you know, in the last round of consultations I really endeavoured to bring everyone to the table to talk about the ways and means to improve the actual discussion document of the next steps. Out of the consultation, one of the things that came up was the need for a balance in terms of rights advice. That came up at all the consultations. Through that, in the legislation we're proposing now, we have incorporated rights advice, we have incorporated a review process, an appeal process, as well as legal counsel. Do you feel we have done a sufficient job in developing the balance, so we not only give the patient the right to treatment but respect their individual rights?



**Mr Wall:** I want to make sure that patients have their rights. The rights are a two-sided coin, as we all know. It's the right to say no, but it's also the right to be able to have somebody say yes for them. I think it does. Again, I was on a radio program this morning run by consumers. When I first went in there they were quite worried about it. When the program was over, they said: "Oh, we understand. You're not my enemy." So yes, I think there are rights.

I'll say this much: This is a different society than it was 20 and 30 years ago, and family members won't take anything anymore. We are educated, we have the Internet, we have the ability to communicate, and we are not going to allow anyone to hurt our kids any longer. It's that simple. Regardless of what the law is, we'll fight.

**Mrs McLeod:** Thank you both for the presentation. Ian, you can help me understand the way the community treatment order would work if you would be able to say to me why that would have made a difference to you. You're obviously aware of the need for treatment, you're aware of the need for compliance, so how would this change have made a difference earlier in your experience with the illness?

**Mr Chovil:** Assuming that when I walked into the emergency shelter I was diverted to assessment for psychiatric illness and possibly hospitalized—I mean, even after I started on medication, it took three years for me to realize I had schizophrenia. I took the medication unwillingly, only at my psychiatrist's insistence. Assuming I was in hospital and being treated through a substitute decision-maker, because I was not capable of making an informed decision, I would be fine while I was in hospital, but as soon as I was discharged, there was no way that anyone could keep me on medication, through a substitute decision-maker or any other way. With a community treatment order, someone can be discharged and kept compliant with medication until such time as they're capable of an informed decision on whether to take medication or not.

In that sense, the legislation as it is now could have gotten me assessed earlier, in the first year rather than 10 years later, when I got in trouble with the law. It would have kept me on medication. I understand that the community treatment order is more of a last resort sort of thing, but it could have allowed them to discharge me and I would still have been compliant until such time as I was able to realize that I was very ill.

**Mrs McLeod:** Would you have had to be forced to take the medication? One of the things we hear is a concern about people—you know, the image of people being held up against a wall and forced to take medication. Others have said, no, it's the fact of having made an agreement that would bring greater compliance.

1420

**Mr Chovil:** It really raises the profile of the medication in the treatment. Essentially, it makes a world of difference whether you take the medication or not. It's very difficult for someone to realize that the medication will help them that much, because unlike any other drug,

it's not an immediate effect. It takes two or three years before you really see the benefit of the medication, I mean in the long run. Six weeks, I think, is an average response time for an anti-psychotic when someone's psychotic.

It raises the importance of the medication in the treatment and—I've forgotten your question, because my short-term memory doesn't work very well.

**Mrs McLeod:** It's whether or not people would have to be forced to take the medication.

**Mr Chovil:** As I understand it, there will be a series of levels of force, as you say. There will be an agreement, a gentleman's agreement that they will take it every night to comply with the treatment order. If they relapse and have to be reassessed or maybe when they don't show up for an appointment, they'll be given a phone call and if they don't answer that then someone will come around to the house to see where they are. As I understand it, it will be an increasing escalation of force per se, the ultimate level being an injection every two or three weeks that will guarantee compliance with medication. But that's a lesser-quality medication than the atypicals available now. I understand they want to use the atypicals first, even in a community treatment order. I could be wrong.

**The Chair:** Thank you both for coming before us. Before you depart, I just want to tell you, Mr Wall, and the members of your association who've come before us here—it's important to put on the record in case not everyone is aware—that these are somewhat unique hearings. We're holding them after first reading debate of the bill. Normally, you hold hearings after second reading and everyone's sort of adopted their formal position, and it's not as prone to lead to the sort of all-party support for amendments that we think we see developing right now. So it is very appropriate that you came forward with your specific proposals, and the others we've heard so far and will continue to hear. I want to tell you that already in the discussions behind the scenes, when we break for lunch and after the meetings, that we really are seeing from all three parties a recognition of the importance of moving forward. We do want to hear about specific suggestions for improvements. We do appreciate the time you and the members of your group have taken to come and visit with us here today.

**Mr Marchese:** If only we could do that with other bills.

**The Chair:** We're setting a trend here, Mr Marchese.

**Mr Wall:** I want to say thank you. You all recognize that this is a health issue, not a political issue. Thank you very much.

**The Chair:** Absolutely. Thank you, Mr Wall.

#### MICHAEL AND MAUREEN CASSIDY

**The Chair:** Our next presentation will be from Mr Michael Cassidy. Mr Cassidy, good afternoon. We appreciate your joining us here today.

**Mr Michael Cassidy:** I'm joined by my wife, Maureen Cassidy, who was booked for a doctor but it turns out that she is free.



**The Chair:** Excellent. We have 10 minutes for your presentation. Please proceed.

**Mr Cassidy:** Thank you. My wife, Maureen, and I come before you today to support Bill 68 and to express the hope that it will be adopted by the Legislature without any significant changes. We make this submission based on the experience we have had with Ontario's current Mental Health Act over the past 15 years.

Our youngest son became seriously ill with schizophrenia in 1985. Over the next 12 years he was admitted to hospital a dozen times and spent a third of his time as a psychiatric patient, either in Ottawa hospitals or at Brockville. We faced countless obstacles, many of them stemming from the Ontario mental health law, in securing appropriate care for our son. We are fortunate that today he has his own apartment, has daily assistance with medication, and with this support has succeeded in keeping out of hospital for the past three years. Nonetheless, we cannot help feeling that the 12 years our son spent going in and out of hospital, the revolving door, could have been drastically reduced or even eliminated if legislation like Bill 68 had been in force.

As you no doubt know by now, schizophrenia is the most serious of all the major mental illnesses. It affects about 1% of the population over their lifetime in Ontario and world-wide. In many cases, the illness lasts for decades. Schizophrenia is a disease of the brain, the serious symptoms of which are its effect on people's ability to think clearly, to look after themselves and to make sensible decisions about their lives. It scrambles the brain and often is accompanied by such symptoms as paranoia, psychosis and unreasonable fears and delusions. There is no known cure for schizophrenia, but its damaging effects can be sharply reduced through the regular use of anti-psychotic medication.

Our story is typical of many families where someone in the family begins to show the symptoms of schizophrenia. At first, we thought our son was just suffering from adolescent growing pains. A psychiatrist who saw him regularly for over a year failed to identify his illness. It took three years before we finally had a diagnosis.

Then what? Under the Mental Health Act, our son was considered well enough to leave hospital, though his illness was not yet under control. There followed a series of makeshift living arrangements in student lodgings, in rooming houses, a disastrous move to Toronto in which he wound up in hospital, and an attempt to move to Pennsylvania, which was thwarted by an alert border officer at the United States border. I should say that because of our son's condition, we could not, while we were both working, leave him in the house on his own alone. The security risks were just too great.

Our son would typically spend three or four months in hospital, where his condition would improve thanks to regular medication and an absence of stress. He'd be fine for a few months once he was back in the community. Then he would stop taking his medication, with the inevitable result that his condition would deteriorate. All we could do was watch helplessly. We had learned that

there was no point calling for help to have our son readmitted to hospital because he would not go willingly, and the conditions for involuntary admission under the Mental Health Act of Ontario were too strict for him to qualify until he became desperately ill again.

We found ourselves blocked, not just by the law, but by the way it was interpreted. The law allowed for involuntary admission to hospital only if a doctor was convinced that the patient's mental disorder was likely to result in imminent and serious physical impairment. As we have heard too often from other anguished family members, the term "imminent" has often been interpreted to mean "almost immediately," with the result that family members who have been ill for months are often turned away from hospital when the family appealed for them to receive care, on the grounds that the sick relative was no longer in imminent danger.

My wife and I welcome the proposed removal of the word "imminent" in the bill's criteria for involuntary admission. We also welcome the new provisions in the bill that broaden the criteria for readmission to hospital of a patient who has suffered already from serious mental illness.

After our son was diagnosed with schizophrenia, we had many episodes where his condition deteriorated to the point he needed to return to hospital. Even though schizophrenia is known to endure for many years, we had to meet the same conditions each time we were seeking to have him readmitted as an involuntary patient, as though he had never been ill before. The proposed changes to sections 15, 16 and 20 of the act mean this will no longer be the case.

Finally, my wife and I would like to welcome the introduction of community treatment orders to Ontario under Bill 68. In other jurisdictions, CTOs have proved successful, both as a tool and as a means of persuading patients to agree to take their medication voluntarily. Here again, we cannot help reflecting how the course of our son's illness might have changed if he had been required to continue taking medication whenever he was discharged from hospital. It has taken him 12 years to accept that regular medication is essential if he is to remain living in the community, and even now, this is only with the assistance of an assertive community treatment team.

How much further might our son have progressed today if he had only had one or two years of serious illness, followed by regular treatment that enabled him to control his symptoms and remain living in the community, to finish high school, to develop his artistic talent and maybe to go to college, to find a girlfriend or get a job?

We know that Bill 68 is only part of the answer to the problems of treating mental illness in Ontario. We are particularly concerned that psychiatric beds will not be available when they are needed because of recent cutbacks. The bill will still help, however, because it is likely to result in quicker admissions when care is needed, followed by shorter stays in hospital and much less frequent need for return visits.



When you review Bill 68 and make your recommendations to the Legislature, we ask you to think of young people just beginning to suffer from serious mental illness, like our son was 15 years ago. Must these young people stay in the revolving door syndrome for 12 years because Ontario puts so much emphasis on their civil rights that it effectively denies them needed treatment? Or will you proceed with Bill 68 and offer the hope that in future, people in our son's situation will have the chance of early, effective and continuing treatment, and not suffer the waste of years and of talent that we have seen with our son?

Thank you very much on both of our behalf.

**The Chair:** Thank you. The committee has about three minutes for questions, so this time in the rotation we're up to the Conservatives.

1430

**Mrs Munro:** Thank you very much for coming and giving us insight into it from your perspective as parents. We've heard from a number of groups their concern about this being too broad, the potential for too many people to be involved, that they would like the definition to be narrowed. I wonder if you could offer us any comments or any suggestions in dealing with that concern we have heard.

**Mr Cassidy:** Len Wall just told you that 35% of the homeless are people suffering from schizophrenia. That's what results when the criteria are too narrow. We've been there and done that. I'm confident that if you give more leeway so that people can make appropriate decisions—psychiatrists are not beasts slaving to put people into hospital. Also, hospital beds are going to continue to be a scarce resource. That's not really going to change. There will continue to be problems, but at the same time I believe that the protections that are there, the fact that it's 72 hours, and then seven days, and there are numerous reviews—the days when somebody got thrown into a psychiatric hospital and left there for years on end left us a long time ago. That's not going to recur.

**Mrs Munro:** One quick question: Would you have any suggestions for recommendations, any changes you would suggest?

**Mr Cassidy:** I didn't want to make too many suggestions. I did think that the conditions related to CTOs were probably a little too strict. Somebody who came in with a full psychosis, clearly in need but who recovered very quickly with medication in hospital after only one episode, but who said, "Look, when I go out I'm not going to continue taking the medication"—that is a case for CTO without the rather more arduous conditions in the proposed bill.

**Ms Maureen Cassidy:** I'd like to see them called community treatment agreements, because that implies a two-way street.

**Mrs Munro:** We certainly heard that. As the Chair mentioned a moment ago, because of the fact that we're doing this legislation at this point in the process, we are very interested in that kind of comment.

**Mr Cassidy:** We had a friend whose son committed some crime and was put under a forensic order to take medication for a year. He'd had a lot of problems, but for that full year, while he was under that court order, he kept his medication, he improved, and on the day the court order expired, he was back to where he was before. I think the CTAs or CTOs will be an effective negotiating tool. Many people will not even sign them, but they will agree. I think as well that they will provide enough of a pretext that people will say, "OK, I've agreed to this, or this is the order, and I'm going to stick to it." I don't think most people are physically resistant to taking the medication.

**The Chair:** Thank you very much, Mr and Mrs Cassidy. I'm sure, Michael, it must be somewhat ironic after the debates you probably sat through in 1978 to update the Mental Health Act. It's an object lesson to all of us that issues such as mental health and the Mental Health Act are something that have the potential to touch any life. I very much appreciate the courage you folks have shown by coming here.

**Mr Cassidy:** I have to say that I speak like perhaps many people, which is that 95% of us in this society don't directly experience mental illness through a family member. In 1978, those amendments went through and it was Greek to me. I just wasn't there in terms of understanding what was happening and why it should occur.

**The Chair:** The good news is that from all caucuses we have people who have had a family perspective, family issues relating to mental health. That's allowed them to be strong advocates for the changes we're talking about making right now.

**Mr Cassidy:** Ottawa Centre is always a leader in progressive thought. I thank Richard Patten, who now has the seat I held, for having introduced private members' bills that preceded this bill.

#### CANADIAN MENTAL HEALTH ASSOCIATION, OTTAWA-CARLETON BRANCH

**The Chair:** Our next presentation will be from the Canadian Mental Health Association, Ottawa-Carleton branch. Welcome to the committee.

**Mr Dwane Unruh:** We're going to try to be brief. We would like to say, to start with, that we agree very much with the submission you had from the families of people with schizophrenia just now. I'm actually a family member myself, three times over. I'm also a program coordinator at the Canadian Mental Health Association in Ottawa-Carleton. Marnie Smith is a program coordinator as well.

I'm going to try to get through this. My voice is flagging, I'm afraid, but I'm going to try to get through this as quickly as possible so we can answer some questions. Our perspective is a little bit different from the previous submissions, but I think you'll find that what we want is ultimately the same thing for people.



The Canadian Mental Health Association, Ottawa-Carleton branch, is a non-profit organization involved in the planning for and delivery of services for people who have a serious mental illness. Directed by a community board, CMHA works with a strong network of mental health, social service and supportive housing agencies, consumer-survivors, hospitals, planners, family members and funders. We also provide direct service to consumer-survivors through outreach and case management services. Our direct services focus exclusively on the homeless. In the year 1999-2000, the agency provided quality community-based direct services to a total of 521 homeless individuals with serious mental illness. Through the mental health community support services coordinated through our agency, a total of 739 individuals received long-term case management or outreach services.

In this submission, CMHA outlines its response to Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996. We wish to focus particularly on how the bill might be amended to address issues related to the community mental health care system and then to provide some ideas concerning the community treatment order provisions. I was quite encouraged by what you had said earlier about this still being an open process—that's what I think I understood—just after first reading.

We are aware that the committee has heard a submission from CMHA Ontario division that proposed extensive amendments to the bill. We will not try to be as extensive in our submission, but we do direct your attention to their submission. Our focus is less on the detail of the bill, except in relation to certain difficulties we anticipate in implementing parts of the proposed legislation.

I wanted to focus first on legislative provisions not present in the bill in hope that you could reconsider the context in which the bill is situated. We have grave concerns that Bill 68 focuses narrowly on changes to the Mental Health Act that will bring in community treatment orders while ignoring changes that could help to ensure proper delivery of community-based service to people with severe and persistent mental illness. The following are submissions concerning the proposed legislation that we believe would help to lay the groundwork for a better, more integrated and comprehensive mental health system.

CMHA has consistently maintained the need for a comprehensive community mental health system. Regrettably, the new legislation does nothing to clarify the various linkages between components of the mental health system, nor does it establish minimum standards for service provision. We recommend that the bill be amended to clarify these linkages and establish minimum standards for service provision.

The existing mental health legislation emphasizes hospital mental health services. We recommend that the bill be amended to include clear delineation of hospital and community mental health service delivery.

Along these lines, the legislation should include a statement of rights, similar to the bill of rights included in the Long-Term Care Act, 1996, that will apply to all people who use mental health services and supports governed or funded under this legislation. Included in such a statement of rights could be the right to dignity and respect, to least-restrictive environment, to services in the person's home community and to access to services appropriate to the person's needs, including special needs, the right to refuse service, choice of service, a review process and access to information.

In addition, it is essential that there be a clearly defined, accessible, effective and user-friendly enforcement mechanism in place to ensure that these rights are respected. Possible enforcement mechanisms include contractual arrangements and/or a readily accessible complaint mechanism, both internal and external to the service provider. A patient advocate is an example of what this mechanism could be—an ombudsman etc.

These legislative steps would be insufficient, however, if not accompanied by swift implementation of strong community-based services through greater funding to community mental health. Currently in Ottawa-Carleton, 80% of all funding apportioned for mental health goes to the institutional sector. Individuals with severe and persistent mental illness can wait at least two years for case management services. Added to this, there is a lack of affordable and safe housing in Ottawa-Carleton, which has the lowest vacancy rate among major Canadian cities, at 0.7%.

#### 1440

I refer here to the prevalence rates of mental illness in Ottawa-Carleton—I have given you a one-sheet summary—just to give you a sense of the numbers we could ultimately be dealing with if we had adequate resources in a community. The estimates here range between 4,458 and 11,887 people who could legitimately benefit from services that certainly are not adequate to serve that number of people in a quality way.

Clearly, if sufficient supports are to be put in place in this region, the underfunded community mental health sector will need to be supported adequately and adequate housing resources will need to be developed. The transition from a fragmented system, biased heavily towards institutional care, to an integrated system where 60% of funding is allocated to the community sector requires not only a major reallocation of funding over several years, but also the infusion of significant funding to create, staff and develop community based services as the number of hospital beds is reduced. A multi-year funding commitment is essential. We estimate that a further \$320 million in transition funding is needed to ensure success. Moreover, the provision of appropriate housing for persons no longer "housed" in hospitals will require large additional sums for the acquisition, operation and maintenance of such housing. Some estimates in this area suggest a need for a further \$250 million in ongoing funding.

At this point I'd just like to point out the book we've given you, this handout, which is a consumer preference



survey our agency had sponsored through an independent body to assess the preferences in all areas, whether it's housing, what kind of supports, how they want the mental health system to work with them. If you were to peruse it, this may give you some idea of what the consumer-survivors are saying and what they feel is needed, based on their own experience in our community in Ottawa.

With regard to parts of the legislation that refer to community treatment orders, we wish to make the following observations. We are as hopeful as anyone that the concerns of the previous speakers could be addressed adequately; we're just not sure that they can be addressed through community treatment orders, so we want to raise some of the potential problems.

We have serious concerns about the implementation of community treatment orders. We have taken the position in the past that our community does not need community treatment orders; it needs adequately funded community mental health services such as case management and outreach services. Evidence provided to the committee by CMHA Ontario division has suggested that community treatment orders have not been proven to be successful; what has been proven to be successful, however, are community mental health services that are flexible, voluntary, mobile and psychosocial-rehabilitation-based, like case management and outreach services. Very often, when studies have been done of community treatment orders and when they have shown some measure of success, they can only attribute that success to the services that have been attached to the community treatment order.

Some confusion exists as to when community treatment orders might be used. If a person is "formable" under the Mental Health Act, ie, they meet the criteria for involuntary admission to a psychiatric facility, they pose a current threat to themselves or others. If one is to consider the safety of the community and of the person, a release into the community could only be contemplated, it would seem, once a person no longer meets the criteria for involuntary admission under the Mental Health Act. Otherwise, the release into the community represents a significant increase in liability to the practitioner who signs the order and possibly to any community-based agency that agrees to participate in the order. I'm not sure that people have considered the safety issues that might be involved in actually letting someone who otherwise would be "formed" and put in the hospital out at that moment.

On the other hand, if a person no longer meets the criteria of involuntary admission under the Mental Health Act, what incentive would there be for the person to sign a community treatment order, since it will not shorten the person's stay in hospital? If we can no longer hold them in hospital, we have nothing with which to coerce them into signing a treatment order. Despite great hype in the media, it is hard to see how major inroads in the provision of services to individuals with serious mental illness will be made through the provision of community

treatment orders—and I might say through community treatment orders alone, but maybe just in general.

Moreover, we are uncomfortable with the role of enforcer that community agencies may be forced to adopt in relation to community treatment orders. The development of trusting relationships with clients is the cornerstone of our direct services. Although we have in the past been and will continue to be involved on occasion in forming someone under the Mental Health Act, this process is clear in its relation to safety issues as they relate to the current situation of the client. A client of the agency may agree to terms in a community treatment order that they later regret, and although fully competent to make this decision, cannot easily revoke. An agency's role in enforcing such an order may well be problematic, and that's just one example of where it may be problematic.

Despite these comments, we do not wish to focus at great length on the community treatment orders, as we wish to ensure that the issue not be allowed to obscure the larger issue facing the mental health system at the moment, that being that at the present time, Ottawa-Carleton does not have sufficient community mental health services to meet the demands of our population. There is skepticism in our community that new mental health legislation will remedy the gaps in the present system and provide an integrated service delivery for our citizens who have a serious and persistent mental illness. Unless the new Mental Health Act legislation enshrines in it the specifics of a comprehensive mental health system, there is a concern that the legislation will not provide a sufficient platform for reform of our system.

We exhort the members of the committee to bring this perspective to the Mental Health Act amendments and to recommend sweeping changes to ensure that the Mental Health Act becomes the first player in a series of changes to the mental health system that will finally bring about the integrated, comprehensive system long awaited by this and other Ontario communities.

I'd like to thank you for the time we've had, and we'll be willing to answer any questions, specifically Marnie, because my throat is about finished, I think.

**The Chair:** Thank you. That leaves us with about five minutes for questions, so I'll divide it this time between the Liberals and the NDP.

**Mr Patten:** Thank you for your presentation. I certainly concur that unless you have a comprehensive system, as you call it, this is not going to work. There are opportunities for amendments, and I think you will see some of those go forward.

The one thing, though, that I would like to say is that you refer to no evidence of anything positive from community treatment orders. I must tell you, I don't like the term "community treatment order," because it historically came out of our court system. I believe the intent of this is to arrive at maximizing a consensual agreement with the patient or their substitute decision-maker. There is evidence that being part of this, with the seriousness of the arrangement, the agreement, it does have some im-



pact, number one. Second, there are three studies in particular, some a little more recent, that show some rather significant reduction in hospitalization of those who are on a CTO. It seems to me that that opportunity, while it is an alternative to a hospitalized situation—there are some encouraging signs when you look through the literature, as I think many of us have, though that literature is not massively extensive, of course. It's a matter of how you want to interpret it.

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**Ms Marnie Smith:** There's no doubt, Mr Patten, that it's very important to try to figure out ways to get treatment for our client sector and for people who have mental illnesses, because we understand, from our working perspective with our clients, that it is often difficult to access services. We've been fairly successful in doing so when we have had workers who have been able to monitor clients and then get them into services. I think there's a lot in the legislation now that will help, in some of the wording changes, where "imminent" will come out, and also if there's education and training done across the hospital sector on how broadly the terminology can be interpreted. I know Michael Bay had done a wonderful education and training exercise previously, and hopefully something like that can also occur in the future so that when the legislation is passed, it will also be used in the way it should be used. I think that was what Dwane was really tapping into, that we did have a lot of difficulty when we brought our clients in, trying perhaps to get an assessment in emergencies, or an admission. Sometimes it wasn't being interpreted that it was time they could be admitted to the hospital. There's no doubt it's a problem. But I think there is a difficulty in believing that community treatment orders or agreements, however we'll word it, will be the answer to what's occurred without getting treatment for clients. I think it'll be one of the mechanisms of doing so, which will be great.

The importance that I think the ministry has to add into this, though, is looking at, what does the system of community mental health services look like in our area? We're very underserviced in this area, and I'm not really sure, with the discussions we've had to date, whether that's going to be very quickly remedied. For example, in the program I co-ordinate, we applied for 30-some case managers. We just got funding for 10. The ministry is not really funding what they said should be in place in communities. It is difficult for us as community agencies, when we definitely want better service for our clients, to try and sort through and figure out how you will do that with the resources we have.

**The Chair:** Unfortunately, Mr Marchese, a long question and a long answer have taken up the time, so we'll start with you in the next rotation.

**Mr Marchese:** Was that five minutes?

**Ms Smith:** I didn't think that was five minutes.

**The Chair:** It was indeed. Time flies. Thank you very much for coming before us today. I appreciate your taking the time to bring your views forward.

## OTTAWA-EASTERN ONTARIO RESIDENTIAL CARE ASSOCIATION

**The Chair:** Our next presentation will be from the Ottawa-Eastern Ontario Residential Care Association. Good afternoon, and welcome to the committee. We have 20 minutes for your presentation, sir. If you care to leave any time for questions, I'm sure Mr Marchese in particular would be most grateful.

**Mr Jean-Guy Nadeau:** Good afternoon, Mr Chair, ladies and gentlemen of the committee. I'm Jean-Guy Nadeau, the president of the Ottawa-Eastern Ontario Residential Care Association. We represent domiciliary hostels in Ottawa-Carleton, also known as residential care facilities. We are providing care to the mentally challenged population, and because we work on a continuous basis very closely with individuals who stand to be affected by Brian's Law, we would like to comment on the proposed Bill 68.

To begin, we would like to stress that we do not want to infringe on individuals' right to freedom of choice when it comes to medical treatment. Our facilities have always worked in conjunction with community agencies to ensure that the rights of this population were respected. Nevertheless, we have to be realistic and say that at times, when they are ill, mentally challenged individuals fail to realize the seriousness of their condition and do not recognize that they need professional help. Even when the family is involved, it may be very difficult for them to make the right decision because of their emotional involvement. As a result, they do not insist that proper medical action be taken, and then the individual remains untreated.

The end result is that sometimes mentally challenged individuals have episodes during which they are a danger to themselves or others. There is no doubt in our minds that the incident that ended with the tragic death of Mr Brian Smith here in Ottawa occurred during one such episode. To prevent similar events from happening again, as a community we have to accept that there needs to be a balance between the individual's right to accept treatment and the right for the rest of the population for a safe and secure environment.

Based on our experience in caring for the mentally challenged population, we feel that this bill is a positive step towards solving several social problems.

It is also a fact that a large percentage of the homeless population consists of mentally challenged individuals who have refused medical treatment. This bill represents another tool that can be used by care providers to assist these individuals and give them a chance to improve their lives.

In our view, this bill will also contribute to reducing the homelessness situation by providing this population with the stability they need to function in a group setting. It is often the only requirement missing for our facilities to be able to provide them with a place to live and services to enhance their future. We are experienced, well equipped and trained to house this vulnerable



population and are positive that we can make a positive change, given the opportunity. This bill will give us such an opportunity.

**The Chair:** With that, you've left lots of time for questioning. Mr Marchese, you'll start the round, and we'll be going for about three and a half minutes per caucus.

**Mr Marchese:** Mr Nadeau, there was one individual who spoke earlier about the fact that we really don't have a community service problem but, rather, the problem lies with the individual and the problem he or she has in terms of being able to access the service. Previous speakers talked about how lacking we are in so many areas of community services. What is your experience in terms of whether or not we have what is needed in the community, that there is really a different kind of problem?

**Mr Nadeau:** As we mentioned, we are working closely with community agencies to take care of those people. As residential care facilities, 99% of our residents are mentally challenged people. Those who have come to our residences have benefit of the medical treatment. The degree of care that we could provide in our homes could be extended to more people could they be convinced originally for the medical treatment. They will be more receptive to go to one of our homes, because they don't really like to go to a home where they have to live with certain rules, where they have to go for a meal at a certain time and have to go to recreation at a specific time. We find that's where the difficulty is. If they had been able to have access to the medical treatment, it would be easier to convince them that, yes, they do need some help and they could go to some of those homes where they could be assisted.

**Mr Clark:** Thank you for coming out today and making your presentation. For clarification's sake, in your presentation you referred to your patients or the residents who are living in your facilities as mentally challenged, a slightly different nomenclature than "seriously mentally ill." Are the patients living in your residential care programs people in terms of community living, as what we would know in the political world as mentally challenged, or are they suffering from mental illness?

**Mr Nadeau:** The majority of the illness is schizophrenia. I would say in our homes about 75% of them have schizophrenia. Some of them do not accept to be so and do not want to be treated, but when they have been diagnosed and they have accepted it, they can have medical assistance which has turned around their lives completely. We also have some who have double personalities, some who are manic-depressive, but the majority have schizophrenia.

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**Mr Clark:** Do you see in your mind, then, that the supportive housing in terms of residential care that you're talking about could actually form a component of a community treatment order, that a physician or a psychiatrist would state, "Here's a number of terms and conditions, one of which is that you will be living in this

particular facility and working with these particular people"?

**Mr Nadeau:** We have been providing that service for several years. The majority of our residents, at the outset, when they have recently been diagnosed and have accepted the diagnosis and have come to our homes, are followed by a psychiatrist. We make sure that their meetings are met and that they do go to any medical appointments.

**M<sup>me</sup> Claudette Boyer (Ottawa-Vanier) :** Bonjour, Monsieur Nadeau. C'est un plaisir de vous revoir. Ces deux résidences sont justement dans le comté d'Ottawa-Vanier, alors je suis un peu familière avec ce qui se passe. Ce sont des gens qui sont schizophrènes, et je vous remercie de tout le travail que vous faites, vous et monsieur Howcroft, avec « hostel care » et tout ça. Est-ce que vous pourriez faire un plus grand travail ? Est-ce qu'il vous manque des fonds ? Est-ce que ce projet de loi devrait proposer d'avoir plus de financement ? Ce que j'ai pu voir, ayant visité, et même M. Baird, avec Edgewood, ce que je me suis fait dire à ce moment-là, c'était que si vous ne recevez pas le financement adéquat pour ces programmes-là, vous devrez laisser ces gens-là aller et, comme M. Clark a dit, if these people don't get the full funding, they will be on the street and they will be homeless people. J'aimerais que vous nous dites quel est le financement que vous devriez avoir pour pouvoir continuer le bon travail de « hostel care ».

**M. Nadeau :** Exactement. En juin l'année dernière, lorsque nous avons commencé à travailler pour sensibiliser le gouvernement au programme qui est en vigueur, on n'avait pas eu d'augmentation depuis 1993. Après avoir fait une étude de nos services, afin de pouvoir continuer le même service, que nous n'avons pas négligé même si nous n'avons pas reçu de fonds depuis 1993—nous étions rémunéré à un taux de 34,50 \$ par jour—nous avons démontré que cela nous prenait une augmentation de 10 \$ par jour des 34,50 \$ par jour juste pour « break even ». Présentement, on continue à donner le service dans nos maisons mais au détriment de nos fonds personnels que nous devons ajouter dans la compagnie à la fin de chaque année pour être capables de continuer d'offrir ces services.

Là, l'année passée on était vraiment sérieux que quelque chose devait être fait parce que nos fonds personnels commençaient d'être pas mal éliminés à un niveau qui n'était pas raisonnable. Si rien ne se produit, nos maisons commencent à tomber—l'une est présentement tombée en « receivership », Rothwell Heights, qui est sur le chemin Montréal. M. Howcroft, qui a Edgewood, une grande maison, a des déficits extraordinaires. À moins que le gouvernement ne reconnaisse notre programme, lui proposait de changer sa façon d'opérer. On est sensibles aux gens s'ils sont dans la rue. Il y a 150 personnes, ce qui veut dire que 150 autres personnes tomberaient dans la rue.

Heureusement, la région a réalisé que c'est un problème sérieux. Notre programme, dont vous êtes au courant, est financé à 80 % par le gouvernement provin-



cial et à 20 % par la région. La région a dit : « On va procéder en avant et nous allons donner notre 20 % immédiatement. » Donc, "effectif" le 1<sup>er</sup> janvier, nous avons eu 2 \$ des 10 \$ que nous cherchions. On est présentement rémunéré à 36,50 \$ par jour, et on est touché par ça.

M. Baird, du gouvernement, a reconnu l'urgence ici à Ottawa-Carleton et il a donné un « one-time-only grant » de 550 \$ mille, ce qui représente à peu près 2 \$ par jour. Mais ceci va se terminer le 31 décembre de l'an 2000. Qu'est-ce qui va arriver le 1<sup>er</sup> janvier de l'année prochaine ?

Nous voulons continuer à donner les services, mais nous allons quand même sensibiliser le gouvernement à Toronto maintenant que nous avons beaucoup de difficultés à avoir une réponse positive là-dessus.

**M<sup>me</sup> Boyer :** Merci beaucoup.

**The Chair:** Any further questions? Thank you very much, Mr Nadeau, for coming before us today. It's a different perspective you brought, and we appreciate your taking the time.

#### CHRISTINE RENAUD

**The Chair:** Our next presenter will be Ms Christine Renaud. Good afternoon, and welcome to the committee.

**Ms Christine Renaud:** My interest in being here is very personal. I have a sibling who suffers from schizophrenia. It was about seven years ago that he probably hit the heights of the illness. Like many other families, we spent years of cycling in and out of hospitals. He's destroyed furniture, run up debts, walked out of restaurants etc etc. On one of our last visits to the hospital, he went in there voluntarily, asked us to bring him in, and he brought with him pages of ramblings—I can't think of a better description for it—that clearly indicated he was ill and needed help. He was asking for help. He was contemplating suicide. Even with all of that and presenting all of that, the attending physician refused to sign him into the hospital, saying he didn't meet the criteria.

They wanted to release to us, to which one of my older sisters said: "That's fine. You do that. But when he kills himself tonight, we will be back." Only after we made that threat did they sign him in. Needless to say, before the night was out and before we had made it back home, he'd signed himself back out and was back out on the streets.

It was then that I decided that I was attacking this from the wrong way, that it was the act itself that prevented me from getting him the help he needed, that he couldn't help himself until I had rules and something in place that would allow me to do that. I'm digressing from my presentation, but this is essentially what it gets down to. As I say, my quest began there. It was aimed at changing an ineffective act that put the onus for receiving equitable and compassionate medical treatment on the mentally ill person—the very same person who suffers from an illness that, by its very nature, makes it impos-

sible for that person to know they need help, let alone to be of the capacity to ask for that help.

It was an act that prevented family involvement. The physicians couldn't speak to us, even though we knew long before them when he was ill and when he needed help. The only way we could do that or could get interference was with a court order, and then we just ran into more difficulties there.

Because of all the roadblocks built into this Mental Health Act, members of our society are left to suffer, left to die, left to serve time for crime, or just to serve time because there's a lack of any other facility for them to be treated at. Then they're on the streets and you see people pointing at them and laughing at them, and all I think is that they're somebody's brother, husband, wife or sister and it's because of the system and years of histories that they are now here. I always remember that there is probably a thin thread between them and me.

I cannot find a cure for mental illness, so therefore, as I say, I've taken up this quest. Anything I can do to assist him or any others suffering from mental illness to get the assistance, I want to be there.

It appears that the community treatment order certainly is the right step towards that. It seemed to me when I read through this and when you listen to the concerns, over and over the questions are: Is there a problem? If there's a problem, what is it? Are there other options? And of course, with those options, are we then infringing on their human rights? I've always been of the personal opinion that as long as I allow my brother and others to sit on a street slowly dying, then I have infringed on their right to medical treatment.

I've reviewed the current proposal and I'm going to try to aim at that and some of the problems I see or some of the loopholes. It might be that it's still at its early stages and is very much a discussion paper. One of the changes that I think needs to be made or one of the recommendations is the inclusion of family and friends as the caregivers, and I don't mean the aunt who comes to visit once every six years, but somebody like me, who has lived it and breathed it for seven years with my brother. We are well aware, so when we call we should be taken seriously, that when we ask for assistance we get that. I think we can provide that valuable input to both sides.

#### 1510

I also think it's crucial that there is action on any warrants or any community treatment orders issued. I know that when we went to the police, twice, having involuntary orders—and it's in here—the first reaction was: "Well, it's you guys who have the problem. He doesn't. He's just fine." The second time, Mark explained to them that we were out to get him, so they released him outside of the hospital doors as we stood there in the emergency room watching him run, to which the doctors and the police said to us, "Boy, that bugger can run." We're thinking: "I'm glad you think it's funny. Now we have to go find him again" sort of thing.

There's a section in the bill that deals with police enforcement, entitled "Unauthorized absence," and I



notice two words or statements in there that concern me. One of them begins with the statement, "Where a person who is subject to detention is absent without leave..." and goes on to say that if an order has been issued, the police "may, within one month after the absence becomes known to the officer in charge, return the person to..." As I said, "may" is not going to work. It must be "must" action it, because when we've had legal orders, we've not had them actioned, or the action we've gotten has not been sufficient, in my personal opinion. I think that has to be made a little stronger, that you have to say "you must" order. Trust me, when I've gone in and I've gotten an order essentially to arrest my family member, I've not done that lightly. It's because I know they're in the throes of life or death, truly. To allow up to a month, it's too late, way too late, at that point; there's no sense in my getting the order, there's no sense in doing this, I guess. I think those things have to be considered.

We've all said and we'll say over and over again, and I've often said, that it's a tragedy that Brian Smith had to die and die the way he did, but at the same time he has given us not-so-famous people a voice here. He probably was pivotal in the amount of attention that was given to the whole cause. I'm not saying it was always ignored, but it certainly increased the attention here. I will always be mindful that he didn't die in vain, and I guess that's all I can offer up to his family, that he didn't if this act definitely does come forward.

I guess that would be all I have to say, unless you have some questions, aside from thanking Richard very much for listening and giving me this opportunity, as well as committee members. It's the first time I've ever truly felt I'm doing something for my brother, and I thank you for that.

**The Chair:** There are three minutes for questioning, and I'll give it in the rotation this time to the Conservatives.

**Mrs Munro:** First of all, let me thank you personally for coming forward today. I can appreciate, as with those other members of the community who have come forward, how difficult it is for you to do this. Your comments here are very valuable to us. The information you can provide from that personal position is extremely important. I think you were here earlier when it was explained that this is in an early stage of the process and that we're particularly interested in getting advice from individuals such as you.

One question: A number of people have expressed concerns about the fear that this kind of legislation might make it too broad in its interpretation. There's a fear that more than those who need this kind of response would in fact find themselves in that position. I just wondered whether you had any comments to make on addressing those fears.

**Ms Renaud:** I don't think so. I think this act is very specific, because it's essentially dealing with where the problems were with such quotations as "imminent" danger to themselves and so on and so forth, and that doesn't take in the whole broad spectrum. It generally is

probably for those bipolar diseases such as manic-depressive in the worst of the manic stage, and particularly for paranoid schizophrenics or schizophrenics. I don't know that it would necessarily apply to somebody who was having a nervous breakdown and so on and so forth. It's sort of half a dozen of this, a dozen of that. You make it so strict again that I'm standing there—

**Mrs Munro:** Powerless.

**Ms Renaud:** Yes. So I don't believe it would. I certainly think it's fine-tuning we will be doing. It will probably be a working document for some time.

**The Chair:** Thank you, Ms Renaud. You made comment towards the tail end about "if this act comes forward." I can assure you the bill will be going forward expeditiously. It's whether there are some changes and improvements we can make to the draft you see before you now that is the only matter up for discussion. I'm confident that all three parties share a zeal to get this through the House quickly.

**Ms Renaud:** Well, if I can do anything more.

**The Chair:** Thank you.

#### KAREN WILSON

**The Chair:** Our next presentation will be from Miss Karen Wilson. Good afternoon, and welcome to the committee. Thank you for joining us here today. We have 10 minutes for your presentation.

**Miss Karen Wilson:** I don't think I'll need that much time. Having listened to everyone else, I feel kind of unprepared to deal with the specifics of the bill, but I'm a consumer—I suffer from schizophrenia—and I'd like to just give you a bit of a personal story. I can testify to the fact that at the time I most needed medication, I wasn't able to make that decision for myself, and to the difference that medication has made in my life.

My earliest recollection of something going awry in my mind occurs in 1989-90, during a year I spent in Europe. As I look back on that time, there were a couple of instances where I believed people were able to read my mind. These instances were isolated, and for the most part of that year I was functioning in the real world. However, when I returned to Canada the following year, things began to go very wrong with the inner workings of my mind. At first I suspected my friends were plotting different things behind my back, and eventually that paranoid belief progressed to believing that my apartment was bugged by police and that my friends and family were constantly putting me under hypnosis, among other things. I heard other people thinking my thoughts, I found special meanings in slogans I would see, believed that public speakers and TV personalities were having conversations with me, and I eventually manifested a complete incapacity for dealing with reality. I continued working until approximately 1993, when I accused the pastor I worked for of being a cop and his whole church of being a sting operation.

I was first presented with the diagnosis of schizophrenia, as near as I can remember, in 1992. Upon hear-



ing the diagnosis, I immediately rejected it, as the voices that took over my mind constantly told me that I did not have schizophrenia. I did, however, briefly try medication. I hated the side effects: stiffening muscles, blurred vision, and even an inability to make myself walk. Not believing I had schizophrenia, I quickly went off medication.

I spent several years in a psychotic world. The best way I can describe living in that world is to say it was a tortured existence. I believed I had absolutely no privacy. Voices in my head told me my deceased parents had been evil. I consequently destroyed all the sentimental things of value I possessed, including their wedding bands. This was a completely false belief, as I was brought up in a very loving family. Uniformed police officers once showed up at my apartment because I had been screaming at the night, at the perceived police I believed had bugged my apartment. Suicidal thoughts and urges plagued me.

My psychiatrist, while I continued regular appointments with her, could not reason with me, as I believed she was working for the police. I had alienated myself from family and friends and burned bridges in my career. My sister and brother were beside themselves trying to get me help. They felt they possessed no legal avenues for getting me on medication or having me hospitalized. I was now living on welfare, which eventually led to me receiving a disability pension.

Eventually, out of fear that I would be evicted from my apartment, I shared some of my fears with my psychiatrist, who, as usual, offered that I take medication. She agreed to try a different medication, in the hope it would have fewer side effects. I told her once again that I didn't need medication because I did not have schizophrenia. She countered with the notion that the medication would help me with some of the frustrations I was feeling. Believing the medication would somehow act as a tranquilizer and help me to feel calm in the face of constant police surveillance, I decided to take it.

Two weeks after I had been on medication, I awoke out of the psychotic world I had been living in for years. I began to cry and realized that I had schizophrenia. I immediately called my psychiatrist and told her I needed help in dealing with the fact I had the illness. She reminded me that I had been on medication for approximately two weeks and it had begun to do its work. I began calling my friends to tell them I had schizophrenia, and interestingly enough, two of my closest friends used the same words with me: "Welcome back, Karen." The friend who had been lost to them for years had now returned via medication. I consider medication to be my miracle. I have been functioning in the real world now for about four years, and I have recently returned to work part-time.

As I mentioned before, living in a psychotic world is to live somewhat of a tortured existence. I cannot help but feel that my family, rather than me, could have made the decision for me to go on medication when I was in a frame of mind that rendered me incapable of making a

rational decision. I'm sure if they had, I wouldn't have lost so many years of my life. Also, my decision to go on medication was a fairly precarious one. I made it tentatively. If I had experienced significant side effects I'm certain I would have ceased to take it. My mental health wasn't secure in my own hands.

1520

As far as schizophrenia and other mental illness is concerned, there will be no real cause for celebration until a cure is found, but I believe this bill will help to make the best of a very bad situation, enabling people who can help themselves, indeed people who may be of danger to themselves or the minority—and I stress the minority—who may be dangerous to others, to receive the help they need.

**The Chair:** Thank you very much. We have about five minutes left for questioning so we'll try again this time to split it between the Liberals and the NDP.

**Mrs McLeod:** I'm not sure I have a question. You've told your story so well. I just want to thank you. I'm sure it's not easy to tell a personal story in such a very public setting. I think one of the questions we've all been asking is, how does a community treatment order help? But I think you've said very clearly that if your family could have been in a position, authorized to prescribe medication for you, that would have allowed you to return to the real world much sooner.

I guess my only question, and I've been asking it repeatedly, is whether or not you think at any point it would have been necessary to actually forcibly have you take medication, and are there ways of avoiding that? There are images of people being forced to take the medication, and whether or not there are ways to avoid that.

**Miss Wilson:** I think good psychiatric care is one way. Even though I believed my psychiatrist was acting with the police, she constantly offered me medication on a regular basis and she didn't deny me treatment when I wouldn't take medication. So maybe that's one way. I don't know, sometimes I think force is just necessary, because like I said, you're acting so irrationally you're not able to make that decision for yourself.

**Mr Marchese:** I'm just curious. Once you took the drug that the doctor prescribed and it worked, it was then that you realized you had a problem. If it hadn't worked you would have continued to deny you had a problem. Is that it?

**Miss Wilson:** I'm sure I would have if it hadn't worked.

**Mr Marchese:** And because it worked, you said, "I have it."

**Miss Wilson:** Yes, and because the side effects of this particular medication weren't so bad I decided to stick it out, but it took two full weeks for it to kick in. The first day I took it, I didn't realize I had schizophrenia. It was when I phoned my psychiatrist and she reminded me that it had been two weeks since I started taking the medication that I realized it worked.

**Mr Marchese:** Thank you for your presentation.



**The Chair:** Thank you on behalf of the entire committee, Miss Wilson, for a very articulate presentation. I thank you very much for taking the time to come before us.

#### CANADIAN ADVOCATES FOR PSYCHIATRIZED PEOPLE

**The Chair:** The clerk has not seen the 3:30 presenter yet, so if Ms Clark is around? Hello, Ms Clark. In light of a vacancy, if you'd care to move up your slot, we'd be happy to hear from you now. You have 20 minutes for your presentation.

**Ms Sue Clark:** Please bear with me, because I stutter. I am Sue Clark, director of the Canadian Advocates for Psychiatricized People, CAPP. We are former psychiatric patients who lobby all levels of government on the issues of housing rights, welfare rights, mental health reforms and social justice issues etc. We have supporters and advisers from several community groups. My asthma is acting up too.

Our group is opposed to Bill 68. The story I will tell you is why we think Bill 68 will not assist people in our community.

On November 3, 1997, a woman from Ottawa was with her brother and they decided to go to the Chapters bookstore on Rideau Street in Ottawa. The woman had a Web site she wanted to show her brother on the Internet at the store. The computers were being used so the two decided to have a coffee and wait. A security guard came up to the woman and her brother and told the woman to leave the store. When the woman asked why, she was told: "Last night we think you tried to steal a book but we saw you put it on the coffee table, so we want you to leave the store for good. I followed you out of the store and told you to stop and you didn't."

The woman looked puzzled. Her brother was shocked that his sister was being treated so rudely. This woman had a high profile in the community and was an honest person. She had bought five books the previous day and told one of the managers she was treated rudely by a salesclerk and showed the manager the receipt for the books. When this was told to the security guard, he stated, "They all say that."

The woman refused to leave the store and asked that the police be called to assist the woman, as she thought her rights were being violated. The security guard mocked the woman as he called the police. Two police officers were called.

The woman suffers from post-traumatic stress disorder. The woman became very vocal and loud as a crowd was gathering to see what the altercation was all about. The man and woman police officers said that a quiet area would be appropriate to ask for more information. The Chapters staff brought the group to a room at the back of the store on Rideau Street on the ground floor which had two swinging doors and two small windows. The male police officer, Steven Bell, told the group to stay back from the windows and he led the woman alone

into the back room. He grabbed her left arm roughly and said, "This is what we do to people who steal." The woman protested she had done nothing wrong and reiterated her story. She had to sit down as her legs had arthritis, and Bell, the officer, shoved the woman down on the chair with his hands.

The brother was frantic and yelled, "What is going on in there?" Bell motioned to the group to come in. The woman officer questioned the lady. The lady told her the male cop was rough with her. The male cop said: "This woman should be on medication. I had to manhandle her because she wouldn't comply with me." This was untrue; the lady did comply. A notice of trespass was given to the woman in a form, and a notice of civil litigation for having stolen books by Iron Horse Investigation Co was issued to the lady in question.

The lady went home and was upset and called her friends. She saw bruises on her left arm and had the police take pictures of her arm later that evening. The next morning she had a bruise the size of a grapefruit on her chest. She called the Chapters headquarters in Toronto and told them the story. Nothing was done. Two days later she had a daily protest outside the Chapters store on Rideau Street. A rally of supporters came one day and she had a radio interview on CHUO. Thirteen days of protesting later, the vice-president of operations for Chapters in Toronto, Daniel Soper, spoke to the lady. A letter was sent to the woman apologizing to her and rescinding the trespass notice and civil litigation form, signed by Daniel Soper, VP, Chapters, Toronto, Canada.

She was allowed to go back to Chapters as a "valued customer." The security firm was kicked out of Chapters and a new firm put in. A police complaint was filed and nothing happened. A year later, the woman protested outside the Ottawa-Carleton police station on Elgin Street and asked for a formal apology from Brian Ford, the police chief. The police chief never apologized, even though they had the letter from Chapters rescinding everything. A lawsuit is still pending against Chapters and the police.

#### 1530

The woman in this story is me. Again, the woman in the story is me, Sue Clark—and my brother, Chris Legare. How many similar stories of civil injustice like this will happen, suggesting someone needs psychiatric drugs, if Bill 68 becomes legislation in Ontario? That is the question.

Thank you for allowing me to speak to you today. My advocate, Jane Scharf, can be reached to verify all of the above at 1-613-258-6176.

I'm not finished yet. There is something that was written by Pastor Martin Niemöller. Some of you may know this. It goes like this. Bear with me for my stuttering; it's one of my disabilities, along with post-trauma.

"In Germany they came first for the Communists, and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the trade unionists, and



I didn't speak up because I wasn't a trade unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant." I'm actually Irish, by the way. "Then they came for me, and by that time no one was left to speak up."

I speak for my peers in Canada today. We are opposed to Bill 68.

Any questions, please?

**The Chair:** Thank you. That leaves us about three and a half minutes per caucus, up to three and a half minutes each.

**Mr Marchese:** Sue, I just wondered, have you had an opportunity, you or other people who are part of the Advocates for Psychiatrized People, to review the bill?

**Ms Clark:** We've taken a look at the bill.

**Mr Marchese:** So specifically as to what is contained in the bill, you are opposed to—

**Ms Clark:** All of it. All of the bill. That's my answer: all of it. We don't like anything that forces someone to have forced medication. In the first place, dangerous people should be locked up and not on the streets at all, and that is a point we're trying to make. They shouldn't be on the streets in the first place. Dangerous people should be locked up for life and not let out on probation a few years later to walk the streets. They should be locked up for life. That's what we think.

**Mr Marchese:** If I can, so part of the story you were telling us is to show how a person could be discriminated against on the basis of one's behaviour, possibly, in terms of—

**Ms Clark:** Yes.

**Mr Marchese:** You said you were looking at the book and you'd left it somewhere else—

**Ms Clark:** I had put it down, yes.

**Mr Marchese:** —and as a result of that, that person followed you and the story ensued. Your point is that discrimination exists on the basis of how one appears or how one—

**Ms Clark:** Well, what happened, sir, is that as soon as the security guard said, "We know you didn't take the book, but leave the store," I felt my rights were violated, because my brother was also at one time a security guard, and he went up to the man and said: "Hey, I was a security guard. I can vouch for the credibility of my sister. She's an honest person." Another point we're trying to make here: If Bill 68 was in action at that time, Officer Bell could have had me incarcerated immediately down to the ROH factory and I could have been incarcerated against my will. I would have, of course, called Chapters, but I could have been incarcerated against my will, and I had done zero, nothing wrong.

I'm also concerned about the pending lawsuits you are going to have when people have done nothing wrong. What happened at Chapters is that I became very upset and agitated. I yelled out loud and said, "Hey, my rights are being violated." I asked them to call the police because, hey, why should I leave the store? I was just having a coffee and minding my own business waiting for the computer. So I became agitated, which is part of

post-trauma. I can get excitable. That is not a mental illness; that is part of the post-trauma, like a war vet. I got very hyper with being accused for something I didn't do. So I'd be very clear on that.

This bill is a very scary piece of legislation. I myself have post-trauma and suffered a very abusive childhood and two bad marriages. If I saw someone who looked like my ex-husband, I could yell at the man on the street, not thinking, "Oh my goodness, it might be him." Someone, hearing me yell on the street, could say: "Hey, that lady looks crazy. Call the PD." But that's not the case. Some people like me have dissociative disorders caused by very severe abuse.

If you don't look into those issues, you're heading into a treadmill of a lot of lawsuits should the people have money—and I'm sure a lot of these people aren't going to have money. This law is going to be for very vulnerable people and poor people who use the mental health system because they have nothing else.

I can't go for a vacation to Florida when I'm stressed out. I am out of the psychiatric system now for 10 years, and I've been off the meds for 10 years. But I'll tell you something: I get stressed out, and I have no money to go anywhere. So people use the Royal Ottawa for their so-called medication and their vacationland. That is true. I did that for many years, for 18 years.

**Mr Clark:** I don't have any questions, but I do want to thank Ms Clark for coming out today and participating in this consultation. It's important that people like yourself who have these stories share them with us as legislators. We need to hear from people like yourself who've had these incredible difficulties. It took a lot of courage for you to come out today, and I want to share with you our gratitude for you coming out today and sharing your story with us. So thank you very much.

**Ms Clark:** All I can say is, when Bill 68 passes, it'll be a very sad day in Ontario. The rights of the mentally handicapped will be violated, in my opinion.

**The Chair:** Thank you on behalf of the committee, Ms Clark. We do appreciate you coming forward today.

#### ALANA KAINZ

**The Chair:** Our next presentation will be from Ms Alana Kainz. Good afternoon, and welcome to the committee. We have 20 minutes for your presentation. If you'd care to leave time for questions and answers, we'd be happy to afford that opportunity to members of the committee.

**Ms Alana Kainz:** First of all, I would like to thank you for allowing me to appear before this legislative committee today. I am the widow of Brian Smith. The legislation we are here to discuss today was named after this wonderful man.

Brian Smith lived and worked in Ottawa all his life, except when he left to play professional hockey. He lived his life feeling like he was in a safe place. Ironically, whenever we visited Florida, we would have to remind ourselves that this was not as safe as at home. What we



didn't know was that the mental health legislation we had in Ontario in those days put the mentally ill, their families and innocent bystanders like Brian at the same risk as a walk through downtown Miami—in fact, at greater risk. About 2% of the population suffers from schizophrenia. Ten per cent of them will kill, not others, but themselves. That's over 40,000 people a year in Canada—the equivalent of 50 major plane crashes. All it takes is one death, though, to have a tragedy.

On August 1, 1995, Brian finished his sportscast, took off his jacket, flung it over his shoulder—I'm sorry; I thought I was OK.

*Interjection.*

**The Chair:** We'd be happy to do that.

**Ms Kainz:** No, that's good. Thank you.

Brian's Law is as close to achieving a promise I made to Brian as we can get. As Brian lay dying in the hospital, I made him a promise that I would do whatever we can to prevent this from happening again.

I believe Brian's Law is Brian's greatest legacy and will save lives. The bill nicely balances the right for individuals to make their own informed choices with the right of all people to be mentally well, and with the right of those in the community to be safe.

1540

An inquest was held into the circumstances surrounding Brian's death. I believe the inquest proves that if we had Brian's Law in place, Brian would be alive today.

At the inquest we discovered that in the five years leading up to Brian's death, Jeffrey Arenburg had sent alarm signals to doctors, the police, social workers, judges and friends, and though some tried, most felt powerless to help.

Looking back, Jeffrey Arenburg was a prime candidate for a community treatment order, section 14 of the new bill. He didn't like hospitals, he didn't trust them. His revolving-hospital-door background meant that he would have met the criteria for a CTO. I believe that had a doctor had that option, Jeffrey could very well have agreed to an order so he could go on with his life in the community.

Brian's inquest also heard from a probation officer who knew Jeffrey Arenburg appeared mentally ill, but he did not have the authority to get him to a doctor. He also did not have the information that Jeffrey had been diagnosed with schizophrenia. Section 16 of the bill says those who provide treatment to a person under a community treatment plan are permitted to share with each other information relating to the person for the purpose of providing treatment.

The inquest also heard from a union mission worker who tried to take Jeffrey to the Royal Ottawa Hospital after he damaged a van and made serious threats at CHEZ 106 radio station. The social worker testified that he was shocked when he left on the Friday afternoon and returned on the Monday to not only see Jeffrey back at the homeless shelter but telling the social worker that his voice was now on the radio waves he was hearing. Frustrated, and actually afraid for his life, the social

worker quit his job shortly after that. A nurse who worked with him quit too, the inquest heard. The new criteria for committal to hospital, section 15, would have made it easier for Jeffrey to be kept and treated at the hospital.

Brian's was not the first inquest into a senseless death, nor, unfortunately, was it the last. At least 10 other juries have recommended the changes that have finally appeared in Brian's Law.

The inquest juries are randomly selected juries, like Brian was randomly selected as a victim. These are serious jurors who spend weeks listening to testimony and come up with recommendations. Can a dozen inquests be wrong?

This could easily be called Jeffrey Arenburg's law. Jeffrey was a victim of a mental health law that failed him too, when he shot Brian. There has been a small amount of opposition to naming this legislation after Brian. A handful are afraid that it sends a message that all people who are mentally ill are murderers. First of all, Brian was not murdered. I have come to terms with that. There were two victims here. Naming the law after one of the many victims puts a human face on the legislation and reminds us of its purpose.

This is not about reacting to a serious event. It's about preventing one. This is not about the many people with borderline, very manageable illnesses. This is about the most seriously ill and the severe consequences of them being left untreated for a period of time.

The Canadian Mental Health Association has come out against this legislation. I would like to take some time to address the CMHA. The CMHA had a chance to request standing at Brian's inquest and at others and declined. To me that means they did not want to be an active part of the process that landed us here today with Brian's Law. Had they sat through witness after witness at Brian's inquest, they would likely have come to an understanding that the current legislation does not work.

The CMHA is funded mostly through tax dollars and United Way campaign contributions from people like you and me. The Ottawa-Carleton branch of the CMHA got \$320,000 from the United Way in 1999 and \$2.3 million from the province. The CMHA certainly doesn't speak for me when it comes to this legislation, or the people in my community. I don't think they should be receiving money to oppose legislation that is so widely supported.

This week I plan to send letters to the heads of all the United Way campaigns across Ontario asking that they not give any money to the CMHA that will be used to fight this legislation.

Don't get me wrong. The CMHA plays an important role in delivering mental health services, and it should focus on that. Any money they spend on opposing this legislation is money taken away from group homes, outreach programs and social workers. The CMHA should not be taking sides in this debate. They should leave that to advocacy groups.

The Ottawa chapter of the Schizophrenia Society, which fully supports this legislation, has received only



\$4,300 in public money this year from the region—hardly enough to go up against the giant that is the CMHA.

The CMHA wants the government to wait two years before implementing the legislation. I believe there would be blood on the hands of anyone who follows that advice.

The CMHA worries the most that if you open the door even slightly, all those who suffer from any form of mental illness are at risk of having their rights violated. That is completely wrong. There is still a fair appeals process in place. All those who are hospitalized will have access to lawyers. They have easier access to lawyers than doctors, nurses and the families of victims. If you keep the door closed, many more will die.

The CMHA says the chances of being a victim at random are high. Well, tell that to the family of the woman thrown in front of the subway train, the woman in Ottawa stabbed waiting for a bus and the woman stabbed at the Rideau centre buying coffee. It goes on and on. One life in this province is worth saving.

The CMHA believes this legislation goes against the Charter of Rights and Freedoms. Sure, the charter protects individual rights, but it also protects our right to security of the person. These need not be competing rights.

Since I was first thrust into this debate five years ago, I have been baffled by the tension between some of the players. There seems to be a real hospital-versus-community tension out there. It doesn't make sense to me if we all share the same goal of helping people be at their best. I just don't get it. I feel it is important for all groups, including the Canadian Mental Health Association, to come together on this. What we don't need is any mass hysteria over a piece of legislation which has only good intentions.

Community treatment orders and easier committal procedures are here—finally—as they are in many jurisdictions around the world. People have both a right to be well and a right to be safe, and this legislation deals with that.

I believe we can use this law to start fresh, salve old wounds and start working together.

In conclusion, I recommend:

Brian's Law should remain virtually intact, with a few slight amendments.

Brian's Law is appropriately titled as legislation because being named after a victim puts a human face on it.

The Canadian Mental Health Association should be asked not to spend taxpayers' and charity dollars on charter challenges, which can be hundreds of thousands of dollars that land in the pockets of lawyers in Toronto. Instead, money should be given directly to advocacy groups such as the Schizophrenia Society of Ottawa-Carleton, the Depression and Manic Depression Mutual Support Group and other patient rights groups.

All interested groups should be brought together after the legislation is enacted to discuss how to best imple-

ment it while achieving everyone's goal of better care for all people suffering from mental illness.

I congratulate the government for introducing such progressive legislation. I especially applaud opposition MPP Richard Patten for spearheading the change.

I feel that Brian's death and the death of so many others after him have saved countless lives. It's so seldom in our life, and in our death, that we can make a real difference.

I remember many of us in the mental health debate feeling frustrated and helpless at one time or another. In September 1997, shortly after Brian's inquest, the Ottawa Sun editor wrote, "Any attempt to change the Mental Health Act is wishing upon the fallen star of Brian Smith." Any attempt at change was in vain, he wrote.

Well, Health Minister Elizabeth Witmer, Richard Patten and so many others have proven him wrong. I hope this committee recommends just minor changes to this law, this wonderful tribute to a fallen star—Brian Smith.

**The Chair:** Thank you, Ms Kainz. We certainly have time for questions. In the rotation, we'll start with Mr Marchese this time.

1550

**Mr Marchese:** Thank you very much for the presentation. Obviously, it's always a very difficult thing to talk about the issue once again. I think your contribution was very important, and the only comment I would make is that I don't think we should necessarily take money away from the Canadian Mental Health Association, because I think you need these organizations. Sometimes many of us don't have the expertise to be able to speak on issues, and yes, we disagree from time to time. As you indicated, there is tension between some of the players, hospital versus community—that is out there, it's been out there for years, and it will continue—in terms of where you put resources. I think you're also right in your observation that it would be nice if they could work together. That would be ideal, but I'm not sure it might happen overnight, other than your desire to see that kind of co-operation. But to take money away isn't something that I would necessarily recommend, although I understand the frustration you are feeling.

**Ms Kainz:** Actually, I don't recommend you take money away from the CMHA. I think the services they provide are excellent. What I am saying is to control the spending and make sure that every dollar they spend is on services. There are many patient rights groups out there, and I believe they should have a voice.

**Mr Marchese:** I agree with that.

**Ms Kainz:** But if they had more money and more resources, they could have a stronger voice and they could focus on what they do best, which is determining what's best for them, and leave the CMHA to deliver services under legislation that directs what we all do in the system. In fact, I'd like to see them get more money, more money for homes and more money for social worker outreach programs and the other programs.



**Mr Clark:** Thank you for coming out today. My predecessor, Dan Newman, did a consultation creating a document, *For 2000 and Beyond*. Then we had the document *Making it Happen*. Then we created the *Next Steps* document, the discussion paper we did the consultation on that you participated in. I'm wondering if I could get comments from you in terms of—some people make allegations that the consultation was not appropriate, that it didn't reach out to the stakeholders, that it just wasn't a fair consultation. You participated in the consultation. What do you think of the process in terms of how we've come to where we are today?

**Ms Kainz:** When Brian was first shot, I wanted legislation changed overnight. I just wanted it to happen right away. Now I understand that good legislation takes time. This has taken four years, and it will be five years when it's all said and done. The consultation really started for me five years ago, and there have been at least 10 inquests—some say 13 inquests—since 1990 that have dealt with the law. So we had that opportunity through inquests. Then we had mental health reform; that process occurred. Then the pending legislation came out, and you led the consultation around the province on that. And now we're here today. I believe that every voice has been heard and I think we're ready now to get to work. What's trickled down through all of this is some very good legislation.

Ontario is behind other jurisdictions. We've learned from other jurisdictions too. I think this legislation will be a model for other communities now, other provinces or states or countries, other places.

**Mr Patten:** Thank you for coming out today, as is appropriate. As you say in your paper, can all these inquiries be wrong? Yet, as I'm sure you know, there are numerous groups, mainly consumer-survivors, as they call themselves, who categorically, vehemently, are opposed to this legislation in the name of human rights. Their fear is that they will be swept up, grabbed off the streets and literally thrown into hospitals, that they will lose their personal human rights. In some cases I ask if they have read the legislation. Some say they have; some have not. But there's this atmosphere in community groups in this particular field that is to me quite worrisome, quite disturbing. I have two reactions: One is that I want to be as responsive as possible to allay the fears, and the other is that I think there's a propagation of a total misread of what this legislation intends to do, which is geared to a very small group, as you said in your paper, of people within the mental health population, maybe as small as 1%.

I know you've studied a lot, have read a lot, and I know you continue to do so. In your findings, how would you explain this with people you've met? Do you have an explanation for this?

**Ms Kainz:** First of all, we've lived with a Charter of Rights and Freedoms for over 10 years, and I think as a society we've learned that individual rights are important and should be protected, regardless of what legislation we have in place. I do see that there could be some problems with hysteria, and had this been knee-jerk legislation enacted three years ago we would have had much more opposition than we have today. I think there's been a history of tension that I would like to see dissipate over the next five to 10 years. That started decades ago, where there were abuses, where there was neglect and where people were incarcerated wrongly. As a society, we listened to the problems that we had for many years and we came up with legislation that swung the pendulum way too far in one direction. My belief is that this legislation swings it back and it lands in the middle, at the end of the day.

What we have to do now is educate patient rights groups and other groups that are out there that this will not mean that the police will go around sweeping up the streets and that this is a way for Mike Harris to clean up the streets of Ontario. That's not what's happening here. This is a way to treat people, and people have that right. I think a year from now we're going to look back and say, why were we so worried about individual rights? Sure, we've had some people appeal and they've won appeals and they've lost appeals, and there will be the odd case where people will still have fallen through the cracks and died, but I think we'll see that there'll be fewer cases and fewer inquests. In fact, I say no more inquests.

**The Chair:** Ms Kainz, thank you very much. You've added immeasurably to these hearings. Let me just say it's certainly our goal to find that balance. It's my understanding that it's only the second time ever that the name of a person has been applied to a piece of legislation in the province of Ontario. I think it is very fitting.

**Ms Kainz:** Thank you for doing that. That's why I get so emotional. You didn't make me cry.

**The Chair:** Congratulations to you and best of luck on the institute. Thank you.

With that, colleagues, we conclude our day's hearing here in Ottawa. The committee stands adjourned until next Monday at 3:30 back in Toronto.

*The committee adjourned at 1557.*











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## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 29 May 2000

# Journal des débats (Hansard)

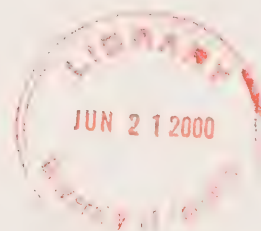
Lundi 29 mai 2000

## Standing committee on general government

Brian's Law (Mental Health  
Legislative Reform), 2000

## Comité permanent des affaires gouvernementales

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 29 May 2000

Lundi 29 mai 2000

*The committee met at 1533 in committee room 1.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

ASSERTIVE COMMUNITY  
TREATMENT ONTARIO

**The Chair (Mr Steve Gilchrist):** Good afternoon, I'd like to call the committee to order as we continue our deliberations on Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996.

We have a number of presenters already in attendance and I'd like to call the first one forward, Assertive Community Treatment Ontario, Dr Ian Musgrave. Good afternoon, welcome to the committee. We have 30 minutes for your presentation, and it's up to you to divide as you see fit between either a presentation or question-and-answer period.

**Dr Ian Musgrave:** Thank you very much, Mr Gilchrist. It's certainly a privilege and honour to be here today. I'm certainly very flexible with how my 30 minutes is used. I'll try not to ramble or talk too much to allow any questions that people would like to ask during this obviously very brief amount of time. I have had circulated a little bit of an outline of the things I'd like to speak to, which hopefully people have in front of them. I should also highlight that I've used the words "my opinion" on some of the things I'm going to speak to. I am someone who is directly employed by the Ministry of Health and Long-Term Care, but I do see my role as, in some ways, also being an academic thorn in the side to the government to continue to help inspire best practices of mental health services in Ontario. I wear that hat as liberally as I need to in order to inspire mental health reform etc in this province. I can't say I'm speaking on

behalf of the ministry for a lot of the things I do for a living for them, including perhaps during this 30 minutes, but I'll do my best to help in any way I can to contribute to your understanding of the Bill 68.

Just by way of introduction, I'm a psychiatrist. I worked for the Brockville Psychiatric Hospital for about 10 years, primarily on services involved with very seriously mental ill people referred to that hospital for long-term care, and indeed was on the first assertive community treatment team in Ontario, which began approximately 10 years ago. For the last year and a half I've been seconded by the Ministry of Health and Long-Term Care to help in the implementation, site visits, nurturing, inspiring as well as accreditation of assertive community treatment teams since this ministry instilled a major public policy shift to involve assertive community treatment teams in the spectrum of care for the seriously mentally ill. We're also moving towards eventually evaluating these teams, and my job includes that mandate as well.

I have just a few very quick comments as to why, partly, we're here in this room today, I believe, some perspectives on the bigger picture of mental health services and why mental health acts are being amended in various provinces of Canada.

In 1962, there were approximately 60,000 patients in provincial psychiatric hospitals across this country. By 1995, there were less than 13,000 people involved in long-term stay. We had the advent of general psychiatry units in the 1960s but nowhere near the same kinds of bed numbers to supplant the provincial psychiatric hospital census. In other words, through a great deal of optimism, a great deal of greater attention to least restrictive environments, to civil liberties, also with a great deal of optimism towards what new medications could bring to patients who are seriously mentally ill, most governments around the western world have been on quite an agenda of downsizing their long-term beds and indeed their acute care service beds.

To make a Reader's Digest version out of what has happened during that 30 years or so, I would venture to say that many, many people with serious mental illness have been well served, and adequately served, by the kinds of programs and services that have been put in place. However, there are many people who have been left outside of any kind of community tenure with dignity and respect. A lot of people have grappled with that



problem over the past 30 years and begun to truly struggle with the ways we can support individuals with such serious mental illness so that they don't just simply get dumped out on the street, they don't end up back with their families without adequate support, they don't end up in the criminal justice system inappropriately and they don't just simply become revolving door syndromes.

Ontario has been no stranger, like other places, to beginning to innovate and ask serious questions about this. In that sense, I truly honour and respect this current government's last several years of efforts to begin revamping services which truly begin to close the gap on that group of individuals whom we typically refer to as being heavy users of the mental health system. They can be variously defined, but I'm talking about individuals who have never yet had the opportunity to live outside of a long-stay institution, have been there for perhaps years and years, and also that group of people who are constantly in and out of general hospital psychiatric units, sometimes for much longer than 60 days in the last two years, which is a benchmark that's sometimes used to define people who are revolving-door-syndrome individuals.

In that respect, assertive community treatment teams do indeed form an important benchmark and backbone, if you will, for beginning to address that gap. We've talked about the principles of mental health reform in Ontario going back to the Graham report, and they are still echoed in some of the changes we're making. But it has really only been in the last several years that we've begun to truly bring about some major agenda changes. While people can be critical of just how ambitious the rate of bed closure has been, we can also praise the current government for the ambitious rate at which they're beginning to implement assertive community treatment teams.

One of my punchlines today is that we've now got cheques from Ms Witmer to the tune of about 50 assertive community treatment teams in Ontario, and a very conservative estimate of the number we probably need to have is at least three times that many, probably at least 150, to begin to epidemiologically close the gap on the number of people who likely deserve such services. I've seen no indication just yet that the government has intended to stop financing and resourcing these types of services. That delights me. I'm also delighted that it's caught up in the health rubric of evidence-based care paradigms, in other words, the ability for us to begin to set standards by which these teams operate, accredit them against those standards and to truly inspire best practices. That's a big new thing in health in general, and it's certainly a delight within bureaucratic circles of the Ministry of Health and Long-Term Care, to see mental health dollars going out with a great deal more accountability and desire to see how those dollars are accounted for. That's a two-way street. Obviously, we work very hard in Assertive Community Treatment Ontario to make sure that those teams, the public in general and those being served all have mechanisms to have their own feedback taken into account in these implementations.

1540

With respect to community treatment orders and changes to the Mental Health Act that are being envisaged for Ontario, off the top I'd like to say that I support the essence and principle of just about everything that I've seen in print with regard to those amendments. Indeed, a lot of what's captured is, as I was suggesting, being captured in many different jurisdictions' desire to truly not leave people outside the formal mental health system and not leave them outside the opportunity to receive necessary and needful treatment.

I'd like to speak specifically to just a few things and, as I say, try to keep my comments as brief as possible to entertain any questions you may have. It's a natural thing to wonder about what the potential relationship is between community treatment orders and ACT teams. So I'm not going to speak to the changes proposed in the Mental Health Act that have to do with the fourth criteria, if you will, of making it easier for patients to receive necessary treatment. I certainly support that issue and that's a by-the-by.

Point number 1 is the criteria overlap between community treatment orders and assertive community treatment teams. If you read who might be eligible for a community treatment order in the proposed legislation, it would not be that unlike who might be eligible for being entered into an assertive community treatment team. In fact, assertive community treatment teams have criteria that are a little bit heavier-duty often than what's defined in the CTO section of criteria. But more or less we're talking about the same clientele who are having an awful lot of trouble either staying out of the hospital or getting out of the hospital in the first place.

The second punchline of what I'd like to say to you is that by far the vast majority of people who you might think not only qualify for a community treatment order but who might be helped by a community treatment order in fact will simply be eminently helped by being admitted to an assertive community treatment team. By "vast majority," it's my best guess that we're talking about 95%. In other words, as soon as the state begins to provide the appropriate amount of resources for intensive, comprehensively based services, whose description is beyond the time we have to get into just now, you'll truly, in my opinion, have captured the greatest amount of good you could possibly do for those individuals you're most concerned about, who are typically, in most jurisdictions, left outside of benefitting from community reform.

That having been said, however, it's my hypothesis, it's my thesis that perhaps for every 100 people referred to services as intensive as assertive community treatment teams, about 5% of such individuals will not benefit from those services unless we enact mandatory, obligatory treatment in the community. In other words, there's quite a number of people who, through no fault of their own, by virtue of their illness, usually through a lack of insight into even knowing they suffer from a serious mental illness, will continue to revolve in and out of our mental



health system, and even after months, if not years, of services from an ACT service would continue to revolve or continue to be found very unwell and returned to hospital.

By ACT services I mean people kindly and professionally dedicated enough to be visiting that person on a daily basis, to be bringing physician help and nursing help and all kinds of help in a treatment rehab and supportive kind of way, in a very intensive way, not being able to make a dent in some individual's life, where literally the families and many other components of society at large are begging you to be intervening and asking, "Is there anything else you could be doing to help this person's outcome?" More or less, the answer has sadly been no. We've usually been in the business of having to observe and watch such individuals extremely closely until they meet criteria for being "certified" and brought back to a facility to receive the necessary treatment at that time. So I really laud the opportunity that service providers in Ontario will have to address that small group of individuals, in both the context presumably of ACT services as well as the context of a variety of other mental health service providers in Ontario.

Point number 2 is the voluntary ethos of ACT teams. I'd like to emphasize that it's very difficult to help people who don't want to be helped. Indeed, that goes for health services of all stripes. We usually have a lot more emotional debate in mental health because sometimes the illness robs the person of appreciating that they may need help. Nonetheless, we really stress in a democratic society, obviously, the civil rights of individuals, even when they lack insight. We go to great pains to put in place all kinds of opportunities for substitute consent when that capacity is not there. Clearly this legislation addresses that as comprehensively as the former addressings of the Mental Health Act have. In that sense, I simply want to say that I support the legislation from the point of view that it's asking for people's consent. If they are not capable of giving consent, it's going after the consent of a substitute person mandated by law. It's in that context that I would see assertive community treatment teams being involved, because they are in the business of not pushing themselves on people who want nothing to do with them.

I'm going to skip to number 5. I've sort of covered 3 and 4 in stuff I've already said. I want to speak specifically to a variety of implementation issues in no particular order or importance. Some of these may apply to more than just ACT teams. But I'd be remiss if I didn't try to stress what I believe will be important implementation issues for us to sort out in the coming months if indeed this legislation is enacted.

I really like the fact that an issuing physician, who will have the responsibility to enact such an order, can't name third parties without their consent. A lot of people were concerned that there may be opportunity for community treatment orders to involve other parties. You may be aware that from time to time judges or probation orders etc have done that very thing, and it hasn't been terribly

fair to the system as a whole not to be party to the kinds of undertakings that may be involved. That clearly applies to community treatment orders.

In fact, point number 2, I truly believe that the typical scenario for ACT teams will be that they'll likely be involved in initiating community treatment orders with their sister health-provider colleagues, from an in-patient setting for individuals whom they know very well. In other words, this is not an opportunity to round up or newly identify patients who haven't already usually been well known to the system. The good news about that is that there's a finite number of individuals who would qualify for such community treatment orders; it's not a black hole of need. Assertive community treatment teams, for example, will be in an eminently intimate and knowledgeable position to be able to identify individuals who might benefit from such enactments of a community treatment order where their previous services have not. So that, to me, would be the typical scenario for how a community treatment order would be initiated. It would not be, in my opinion, a very wise thing for a typical scenario to be for other people to be trying to initiate a comprehensive community-based treatment plan in the context of a CTO without involving individuals who truly have gotten to know the client him- or herself.

Point number 3, and this may be harder for you to appreciate at this point in time, I would truly stress that new assertive community treatment teams which are just getting off the ground ought not to feel any pressure to be taking on or initiating community treatment orders early on in their mandate. That is because a great deal of training and nurturing and start-up time has to take place for these kinds of teams to be truly running on all cylinders, if you will. They are already, in fact, under a fair bit of public scrutiny and scrutiny from within the mental health system as a whole. They are in the spotlight. There's a lot of pressure for them to be truly turning around a lot of people's lives, and I for one wouldn't want them to feel excessively burdened with a new pressure to be initiating CTOs as they are just finding their way. I think it's only a matter of time before services like this become well-acquainted with those individuals on their roster who they truly wish a better outcome for, where a CTO may be worth considering.

#### 1550

My fourth point in implementation is that ACT teams will need to feel both clinically and ethically comfortable with their decision. There's no question we can't deny that there are a lot of people who disagree even with the concept of community treatment orders on a personal ethics basis. That has led to a lot of emotional debate, as you know, and a lot of scrutiny of just what's entailed in a CTO. It goes without saying that a team will need to feel very comfortable to proceed with something as clinically complex on many occasions in dealing with individuals who may ultimately benefit from a CTO. For example, the physician on the team might feel a little bit or a lot more comfortable than certain health care providers on that team, but there's no way that physician could



proceed to enact a CTO unless the team had come to a collective decision. That's captured in the changes to the act pretty well with this notion of a free consultative process to truly figure out what, in fact, would be such a plan. You won't want to deny teams of mental health care providers the opportunity to reach a consensus around how to proceed. It won't be helpful if this is in any way hammered home by an issuing physician, for example, where other members of the team who will be quite intensively implicated aren't at peace with the decision at all.

With regard to something the government set up with respect to ACT teams across Ontario, a technical advisory panel, I'd just like to advise you as well that we also will likely be organizing a system of monitoring ACT teams, especially with respect to their involvement or prospective involvement with community treatment orders. We've already spent a fair bit of time on a little subcommittee of that panel, beginning to understand community treatment orders, and will likely continue to want to take an active interest in that. As you know, other provinces have gone down that route of figuring out how best to do that.

That's my final point here, even though it's not within the specific agenda of the act itself. I think Ontario will do well to globally monitor and study the value and implementation of CTOs, with the capacity to refine and optimize their effectiveness from a variety of perspectives: first and foremost, those being served by them, their family members, from a caregiver perspective, and also study them from a point of view of measurements of an outcome nature, their clinical impact, how the rights protection mechanisms are working and how these kinds of changes to the Mental Health Act have truly integrated or not integrated with other aspects of the mental health system. We somehow have to be willing and able to proceed cautiously enough that we can make refinements and changes as we go along and find out things that we may need to change as time goes on. That probably doesn't mean the substance of the act itself, but more the nuts and bolts of how they're used and how they're implemented. Just like the current Mental Health Act has a cultural context, if you will, of how it's used, clearly we'll need to help guide and monitor how community treatment orders are used and how to monitor and study that so that citizens in Ontario benefit the most from them.

Enough of my ramblings. An opportunity, with the bit of time remaining, for any questions. I hope I haven't confused you more than—

**The Chair:** Thank you, Doctor. We've got about eight minutes, so we're going to have to ask everybody to try and keep it to about two and a half or three minutes each, if they could please, starting with the Liberals.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Dr Musgrave, I appreciate the fact that you've said that, although we're making some progress with ACT teams, we only have a third of what we need to really provide more comprehensive assertive community treatment

teams. So much of this is a matter of resources. There are a number of questions that I wish we had time to ask, like how we staff ACT teams with psychiatrists, given the shortage of psychiatrists, even if we had the dollars.

But I guess the question I'll ask you to focus on is, given the fact that we don't have all the community supports in place to deal with the full range of people who have serious mental illness in the community, are you concerned that the 5% who would meet the criteria for a community treatment order will end up bumping—and you said that the ACT team shouldn't be under pressure—will these 5% end up bumping the rest of the 95%? I guess I'm wondering, do you think it would be appropriate to not proclaim the community treatment orders of this act until we're satisfied that there are sufficient community supports for not only that 5%, but for the other 95%?

**Dr Musgrave:** Good questions. You're certainly thinking on some very valuable aspects. We clearly need to continue to progressively and deliberately put more and more community-based services truly intent and capable of addressing the needs of the most seriously mentally ill. That's by far the number one thing. And we're behind the eight ball like most western jurisdictions that were downsizing their beds for the last couple of decades. Ontario is no exception to that. So by far and away, I'd be just as happy to see us progressively and deliberately resourcing appropriately intensive and comprehensive community-based services without the advent of CTOs in the near future. That's probably a fairly reasonable thing to do.

However, there is no question we would be leaving some people without capacity to live a life of community tenure with dignity who otherwise would have had it. I don't think it's a question of there being necessarily a terrible competition between this vast majority who don't need them versus the few who do. They both merit more intensive and available and accessible services. We need to continue to advocate that this government or any government doesn't stop making sure it's got the right allocation of those services. But I, for one, am just as happy to see us begin to struggle with how to use community treatment orders and the other changes to the Mental Health Act now, as opposed to later.

In other words, we'll nonetheless gain by the experience of enacting them relatively contemporaneously, even though I've always been concerned that there's been just too much pressure on seeing some equation between ACT teams being enacted in order to justify another agenda of CTOs. Quite frankly, I don't believe that was ever the case at all. There isn't hardly even that kind of vision around where either of those were going. Most governments don't think that far in advance, from what I can see. It's usually a question of just a great deal of lobbying going on to see mental health reform move in the directions it should; some shaming process when they look at neighbours like Michigan and Wisconsin and Rhode Island and Vermont. Those are the kind of things that brought about the changes so that ACT teams were



enacted. No doubt, for CTOs the big agenda is the perceived public safety issue, which is really not a huge agenda item for community treatment orders. As much as we would all like to hope and wish that safety will in some way be impacted upon by them, it's not really the huge issue. The issue is the ability to serve people in a community setting with a great deal more dignity and a whole lot less suffering than previously.

**Ms Frances Lankin (Beaches-East York):** Thank you very much. I truly appreciate your spending the time with us here today. Just a comment first. The remarks that you made about the need to monitor I agree with completely. In fact, of two of the amendments that we will be putting forward, one will look at a sunset provision that requires a review in order for the Legislature to receive a qualitative and quantitative review of the success of this program in order to continue it and/or refine it as necessary; the second, the establishment of a mental health advocate's office looking at systemic issues and conducting these kinds of reviews overall of the system. I think we're coming to the conclusion that this is going to be a necessary part of making this work.

Your description at the end of who CTOs may be helpful for, and the importance for that small group, I think we are collectively struggling with how to make the legislation bring effect to that. I personally don't believe the legislation does that as it's written. It's the intent—I believe completely it's the government's intent; I think it fails in terms of the actual language.

I was interested in a couple of things. You mentioned the ACT criteria are heavier than the CTO criteria. I'd like to ask you to address that. You mentioned that you're in the process of developing standards and I've talked about the need to have standards for CTOs. What are we talking about out there in terms of intensive community services? Any of the standardized and controlled studies in the States show that, for the majority of people, those who receive intensive community services, whether on CTOs or not, improve. It's not the CTO; it's the intensive community services. So, the criteria of the standards.

The last thing is, you said there's still about 5% of the ACT clients that you wouldn't be able to help, who would need a CTO. I'd like to know what it is you think the CTO will actually do that will help those clients, because I would like to get that crystallized and narrow the legislation to that aspect.

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**Dr Musgrave:** Another very good set of questions. We don't have time to get into them the way you'd like and the way that I would enjoy and like as well. As you probably appreciate at least as well as I do, the kinds of criteria for a community treatment order such as Ontario is proposing is much in keeping with most others. The evidence shows that nowhere near as many people end up getting served by them as could theoretically be served. That may not console you too much, but it's a state of fact that almost every jurisdiction that's bothered to study it that I've understood hasn't really used them anywhere nearly as much as they could. As I say, that's not neces-

sarily a strong argument for trying to refine exactly who to make them serve, but it's worth at least bringing that up as a starter.

The fact that ACT criteria and CTO criteria may be similar also doesn't particularly bother me. There'll be no mad rush by ACT services to want to again, in any way, enlist the use of that opportunity, even for somebody who would qualify, when it's totally not necessary. I'm not concerned about that at all. I'm not sure what else you wanted me to comment on—the standards of ACT teams and stuff?

**Ms Lankin:** Well, just let me ask, what are CTOs going to do for that 5%? How will that make the difference?

**Dr Musgrave:** It's really hard to know how best to quickly put it in a nutshell, but as I was suggesting, for every 100 people I've served on an assertive community treatment team, I can name on one hand individuals who I've known and struggled with for years who have had the following scenario: When they're in the hospital with a major psychotic illness, they respond incredibly well to their treatment and the services provided. They leave hospital with every intention to continue that, and for whatever reasons, but clearly reasons tied up with their illness, they end up not being able to contain their well-being. We're talking about all kinds of services and intensity of service that pretty well approximates everything that's going on in that hospital setting.

*Interjection.*

**The Chair:** No more supplements.

**Ms Lankin:** I just want to know—

**Dr Musgrave:** Yes, I'm getting there. I'm just going slower than you'd like.

You go through that time after time after time again, year after year, month after month, if you will. What a community treatment order will do is allow you to intervene by virtue of the non-compliance with the treatment plan—I'm using jargon, I guess—by the person not being able or willing to live up to the covenant of the community treatment order, which will allow you to bring them back to a psychiatric facility by that virtue.

The sense of, "Is this worth the hassle?"—in other words, before, you would wait till they were reaching high-risk and dangerousness. Now you will be able to intervene in a far more a timely way, uphold the law on their behalf and help struggle with that patient to say, "You know, we're really wishing this to make a difference in your life." That in itself, according to North Carolina studies, shows that most people will say: "OK, if it comes to that and you really can intervene with that kind of sincerity on my behalf, even if I doubt your agenda or your motive, forget it, I'll take those medicines you've been so kindly offering." A lot of people would just be obviated by the hardship of this perpetual roller coaster ride of wellness and psychosis, just by virtue of having that in place. That's my sincere and honest feeling for a small handful of people I've been involved with. I've just cried with their families on behalf of the current outcome.



**Mrs Julia Munro (York North):** Thank you very much for coming here today and providing us, quite frankly, with a different perspective on this issue. I have a number of questions to ask you, but I realize the prerogative of the Chair. One quick question: In the sheet that you provided for us you mention something about new ACT teams ought not to feel any pressure to be taking on or initiating CTOs. I wonder if, in a couple of moments, you could give us some advice on that issue.

**Dr Musgrave:** We've got about 50 ACT teams. I'm convinced that some of them will be quite shy and ethically not as comfortable to be front lead and cutting edge of implementing community treatment orders. There'll be some others who, just by virtue of their personalities and the makeup and maybe the culture of the sponsoring agency, will be quite willing to get involved earlier. I'd welcome that kind of variety and that sense of just letting this evolve in a naturalistic way, without the teams that aren't feeling in any way—in other words, we'll all learn together. It'll be the subject of workshops, I can assure you, at conferences, and all kinds of other conferences as the years go on, and we'll clearly refine how best to serve clients with them. That's mainly what I'm referring to.

**Mrs Munro:** I think that's a really important notion in terms of professional education, if I might use that term. Does that cover what you're suggesting?

**Dr Musgrave:** It's frequently asked of me. I train, I visit all over the province nurturing new ACT teams. CTOs have been coming up now for the last many months and everyone wants to know your two cents' worth on it. By far and away you meet a lot of people who are less than comfortable with feeling that they need to feel supported in that. I'm convinced they're going to meet patients who they are going to struggle with ultimately and really wonder and consider whether a community treatment order may be in that person's best interests. That's what I'm referring to, as opposed to somebody saying, "You've got to do it now."

**The Chair:** Thank you, Doctor. We appreciate you taking the time to come before us here this afternoon.

#### LORI ANTIDORMI

**The Chair:** Our next presentation will be from Ms Lori Antidormi. Good afternoon, welcome to the committee. We have 10 minutes for your presentation.

**Dr Lori Antidormi:** We are the parents of Zachary Lawrence Antidormi. At the age of two and a half years, Zachary was murdered by our neighbour. Our neighbour was a 60-year-old woman with a long history of serious mental illness that went largely untreated. In addition, she was one of the small proportion of individuals with serious mental illness who also demonstrate violent behaviour. Under the current Mental Health Act, our neighbour remained in the community, untreated and a danger to others.

We are in full support of the proposed amendments to the Mental Health Act. In our view, the proposed amendments represent responsible action that balances

the needs of patients with public safety. From our experience, it would seem that public safety has taken a back seat for far too long. In our personal experience, our safety was never considered, nor was it ever discussed. In the end, and sadly for Zachary, it became all too apparent that we were not safe.

At the inquest into Zachary's death, the Mental Health Act came under close scrutiny, especially the application of sections 15, 16 and 17.

Of particular relevance to our situation, and the section with which we have the most experience, is section 17 of the Mental Health Act regarding police powers. In our view, the proposed changes to section 17 are essential. One change relates to removing the requirement of the police officer to personally "observe" disorderly conduct before acting to take a person in for assessment under section 17. The proposed change would allow police officers to intervene where they have reasonable and probable grounds to believe that disorderly conduct has occurred and where they have reasonable cause to believe that the person has threatened harm or behaved violently.

Evidence supporting the necessity of this change was heard at the inquest into Zachary's death. Several police officers at the inquest testified that they did not see any behaviour which would have allowed them to apprehend our neighbour. Sometimes this reflected a lack of understanding of the act and the word "disorderly." On other occasions, when the officers finally arrived at our home, generally several hours after the call was placed, our neighbour did not appear to be a threat to us or to herself, and she was often now behaving in a calm manner. This picture, however, was quite different from that reported by ourselves and by the daughter of our neighbour. Yet under the current Mental Health Act the police officers were restricted from taking our neighbour to a facility for assessment, as they did not directly observe disorderly behaviour or were not of the opinion that her behaviour was indeed disorderly.

#### 1610

Through testimony at the inquest, we also learned that police officers are trained to use their discretionary powers while obtaining third-party collaboration to lay charges under the Criminal Code of Canada. It is our opinion that similar powers should also be applied when dealing with a person with a serious mental disorder to apprehend them under section 17 of the Mental Health Act.

Let me put it this way: The police did not observe Lucia Piovesan stab Zachary 10 times, yet they made an arrest. It is our opinion that if they had been able to act on reasonable and probable grounds, using their discretionary powers with third-party information, they would have been able to take our neighbour in for assessment and the situation would not have escalated to the murder of our two-and-a-half-year-old son, and Lucia Piovesan would have received the treatment that her family had tried so hard and so long to get.

Briefly, I would like to add that in addition to changes to section 17, we strongly support removal of the word



"imminent" from the current committal criteria. As the jury at the inquest into Zachary's death revealed, this word is too easily, and hence too often, misinterpreted. As such, it represents a stumbling block to correct implementation of the Mental Health Act.

Lastly, I will suggest that successful implementation of the proposed changes requires sharing of information among those involved. At the inquest into Zachary's death, police officers testified that they did not share information with admitting physicians as they felt restricted by legislation regarding sharing of information. In order for the Mental Health Act to be effectively utilized, all those involved must feel able to share relevant information. Thus, in addition to the amendments which address guidelines for health practitioners and others who provide treatment under a community treatment order, we recommend the act include guidelines regarding sharing of information at the apprehension stage. More specifically, we recommend guidelines for police officers acting under section 17, and for admitting physicians making the initial assessment.

Making the Mental Health Act understandable, easy to apply and somewhat less restrictive is critical for public safety, and perhaps it is the first step in ensuring that individuals with serious mental illness, who often lack insight into their illness, are assessed so that they can receive the appropriate treatment they need.

In closing, I would just like to reiterate that, in Zachary's memory and in his honour, we support the minister's efforts and the proposed changes to the Mental Health Act. As the jury at the inquest into Zachary's death urged, it is necessary to implement these changes such that Zachary's death will not have been in vain.

**The Chair:** Thank you very much. That leaves us time for one question and the rotation up next would be the NDP. Ms Lankin, you have about two, two and a half minutes.

**Ms Lankin:** I thank you for coming today. I know how difficult it is, on a continuing basis, for you to face this issue, and your strength and your commitment to seeing change speaks volumes in honour of your son. We were talking out in the hall and I was saying to you that we are struggling, in a sense, to ensure that this legislation actually lives up to the expectations that you have and doesn't live up to the fears that many others in the community have put forward. That's the balance we hope to strike.

Many have said that the previous legislation, as it was written, actually struck the right balance, but we've heard from you and others that, whether the words did or not, the culture and the implementation of it didn't. Do you have any comments about how we should seek to make the language more understandable, plainer? For example, dropping the word "imminent." Some people have suggested replacing that with what the expectation always was supposed to be, a three-month period, actually saying "three months." Can we make this clearer? Because my concern is that as badly as the previous legislation was interpreted, the changes may be badly interpreted and we may still remain with the problem.

**Dr Antidormi:** I think the changes tried to make it a little simpler and more understandable and I guess, like we heard at the inquest, education around what those words mean. Michael Bay talked at length about what the words mean, and physicians and police tended to misinterpret, so maybe more objective or almost measurable types of words rather than abstract words like "imminent" might help in that regard.

**The Chair:** Again, thank you on behalf of all the committee. We very much appreciate your taking the time to join us and share your thoughts.

#### ELIAS AND ASSOCIATES CONSULTING INC.

**The Chair:** Our next presenter will be from Elias and Associates Consulting Inc. Mr Elias, good afternoon. We have 30 minutes for your presentation. Feel free to divide that between a presentation or question-and-answer period as you see fit.

**Dr John Elias:** I wish to thank your committee for inviting me to appear to comment on Bill 68. As I am from Saskatchewan, I consider this a privilege and respect your openness in calling on people from outside of Ontario to testify concerning this important legislation.

I support this bill and congratulate all who have worked to develop it. My only concern is that it doesn't appear to go quite far enough in establishing meaningful powers for providers of mental health services to provide involuntary treatment, either in in-patient facilities or in the community, to people in serious need who are non-compliant. I see obstacles and I'm going to identify them as I proceed.

I now have an independent consulting practice in organizational psychology, but for 20 years, until 1996, I served in executive management of Saskatchewan's mental health system and was extensively involved in the development of Saskatchewan's mental health legislation, including in 1993 when legislation was passed to enact community treatment orders. I am here presenting my own personal views. I'm able to relate some of our experience in Saskatchewan, but I am no longer employed by the government of Saskatchewan and am not in a position to make comments on their behalf.

On several occasions since 1994, I have been invited to Ontario to speak about mental health legislation, specifically about community treatment orders, and to testify at coroners' inquests in cases where deaths had occurred as a result of individuals suffering from psychotic illnesses living untreated in the community.

#### *Failure of sound system.*

**Dr Elias:** I had an opportunity to testify at inquests. The first one was in 1994, in Toronto. It was the inquest into the death of Lester Donaldson—

**The Vice-Chair (Mrs Julia Munro):** Excuse me. We'll have a short recess.

*The committee recessed from 1618 to 1620.*

**The Vice-Chair:** We will resume. Mr Elias, sorry. I must apologize for technical difficulties here. Please carry on.



**Dr Elias:** Fine. I had the opportunity to testify at several inquests in Ontario. The first inquest was in 1994 in Toronto, the inquest into the death of Lester Donaldson, which occurred in Toronto, I believe in 1992, after police were called to a rooming house to deal with a man with a serious psychotic illness who should have been under psychiatric treatment and who had become disruptive.

The second inquest was in 1997 in Ottawa, the inquest into the death of Brian Smith, which occurred in Ottawa in 1995 after the accused, Jeffrey Arenburg, had been living untreated in the community in a delusional state and considered the radio station where Mr Smith worked as a source of his troubles.

Another inquest was in 1997, in Whitby, the inquest into the deaths of two people, a six-year-old child, Jennifer England, and Marian Johnston, the 79-year-old mother of the accused, Ronald England, which occurred in 1996 in Bowmanville after the accused had been living in the community untreated for his psychotic disorder.

These three cases—and I understand a considerable number of other cases where I don't have detailed knowledge—raised serious questions about the provisions in the Mental Health Act and the Health Care Consent Act. At the time of the inquests, I had three main problems or issues as I saw them and I testified about these at these inquests.

First, I viewed the committal criteria as too narrow. Conditions to be satisfied before physicians, justices of the peace and police officers could initiate the process of psychiatric assessment and before attending physicians in psychiatric facilities could issue certificates of involuntary admission were overly concerned with dangerousness in the physical sense.

The second concern was that too often people were being detained in psychiatric facilities where there was no authority to provide them with treatment. Section 10 of the Health Care Consent Act provided that no treatment is to be given except with the consent of the person, if competent to give or withhold consent, or the person's substitute decision-maker, as defined in section 20.

As a result of this manner of obtaining or failing to obtain consent for treatment, as that's provided for in section 33 of the Health Care Consent Act, there appeared to be any number of possibilities for a person who is in need of treatment to be detained but not treated. This appeared to lead to many instances of either the absence of treatment for the person or the misuse of psychiatric facilities for detention only and not treatment or, thirdly, the discharge of persons in need of treatment because there did not seem to be much point in detaining them in hospital because it wasn't possible to give the treatment.

The third main problem, as I saw it, was that with respect to persons who were not being detained but who were outpatients or persons living outside of hospital, the situation appeared to be the same. There was provision for leaves of absence but no authority for treatment while in the community.

At these inquests, I made a number of recommendations which I have listed for you, and in the interests of time I'm just going to touch on them very briefly.

One recommendation was to broaden the reference to harm in the criteria to be used for both action to bring a person to examination and also to broaden the criteria for committal in a psychiatric institution. I advocated the integration of criteria regarding competency into the detention criteria so that the question of competency or capacity to consent is considered at the same time as the other criteria and that incapacity must be established before detention beyond the period of examination occurs.

Where incapacity has been established, I was recommending that you enlarge upon the powers under section 25 of the Health Care Consent Act to provide authority for emergency psychiatric treatment until such time as the question of substitute decision-maker is decided. Then also I recommended that there be more speedy decision-making procedures to get a substitute decision-maker established. I also recommended that where no consent for treatment is obtained, authority for the detention of the person be nullified. Finally, I made a recommendation to make provision in the Mental Health Act for community treatment orders.

*Failure of sound system.*

**Dr Elias:** I shall move on to more specific comments on Bill 68. Stop me if you need to.

As I read Bill 68, it accomplishes a great deal. I applaud those who have developed it. At the same time, I have some questions and concerns, and except for the recommendations which I had already submitted at the coroners' inquests mentioned above, I have not participated in the debate so I may be missing or misunderstanding some points. Nevertheless I make the following points.

First, Bill 68 proposes to broaden the criteria in sections 15, 16 and 17 under which physicians, justices of the peace and police officers, respectively, may act to require a person to submit to a psychiatric examination. It also broadens the committal criteria in section 20. It would remove the term "imminent" with reference to "serious physical impairment of the person" and also provides for a broader definition of "harm" to include the situation where a person "is likely to suffer substantial mental or physical deterioration or serious physical impairment." I consider all of these to be desirable changes. At the same time, I note that the definition of "harm" is still stricter than that found in many other similar statutes.

Secondly—and this is the biggest part of the bill—Bill 68 would make provisions in a new section, 33.1, for a community treatment order, or CTO, to be issued. Now I have a few specific comments. Most of these are very positive features.

The criteria in clause 33.1(2)(a) to be satisfied prior to the issuance of a CTO appear to be appropriate or at least defensible. It's interesting to me that your threshold criterion in subclause 33.1(2)(a)(i) is considerably broader than one adopted in Saskatchewan. You require only two or more previous admissions to hospital or a cumulative total of 30 days of hospitalization over the previous three-year period. It sounds like these admissions could



be voluntary admissions. Any kind of admission would qualify under that criterion. In Saskatchewan, the threshold requires three previous involuntary admissions or a cumulative total of 60 days of involuntary stay in hospital over the immediately preceding two-year period.

I'm not arguing for differences of time frames, but I do question your use of any hospitalization or any period of hospitalization to meet that threshold criterion. It seems to me this would serve to discourage the voluntary use of hospitals or of health care providers by those people who need those services. I think it would be in your interest to limit that threshold criterion to refer only to involuntary hospitalizations or periods of involuntary stay.

(b) The requirement in clause 33.1(2)(b) that the physician, the person or his or her substitute decision-maker and others collaborate to develop a community treatment plan is laudable.

(c) The criteria in clause 33.1(2)(c) to be satisfied prior to the issuance of a CTO seem appropriate and consistent with the best thinking I've seen in the professional literature, except for one missing item, as I see it: that the person lacks the capacity to fully understand or make an informed decision. As I see it, CTOs should only be issued to apply to persons who lack this capacity. It may end up that way, but it seems to me that's what it should say.

1630

(d) The involvement of a rights adviser in advance of the issuance of the CTO, as required in another clause, appears to me a very progressive step.

(e) The consent of the person or his or her substitute decision-maker, as required in clause 33.1(2)(f), is clearly desirable, but I would question whether this might not be a serious stumbling block. Thinking back to the several cases leading to the coroners' inquests I mentioned, it seems to me that all three incidents would likely still have occurred as a result of the person or his or her substitute decision-maker withholding consent. It seems to me unreasonable that what I would consider veto power should be left in the hands of the person who has been found to be in need of a CTO. In my mind, CTOs should be issued only with respect to persons who lack the capacity to consent or withhold consent, as I already mentioned earlier. Making a CTO, that is, a so-called community treatment "order" subject to the consent of the person who's the subject of the order is no order at all but rather an agreement and one that the person can back out of at any time. This I see as a real weakness of the bill.

(f) The obligations of the person who is the subject of a CTO are similar to the obligations stated in similar legislation in other jurisdictions. I wonder, though, what powers exist to require that the person meet these obligations or comply with these requirements. As I read it, if the person does not comply, he or she may be required to be re-examined under section 33.3, but in the end there are no powers of enforcement. Furthermore, under section 33.4, the CTO may be terminated by the person or

his or her substitute decision-maker simply by withdrawing consent. It seems to me all the power really is in the hand of the person who would otherwise be subject to an order, so I don't see this as an order at all but rather an agreement that the person might enter into.

(g) The duration of a CTO for a period of six months, as provided in another section, is longer, I think, than provided in similar legislation elsewhere. In Saskatchewan the duration of a CTO is three months. Nevertheless I see this as defensible as long as the actual community treatment plan involves frequent contact between the attending physician, other caregivers and the person who is the subject of the order, so that there may be a withdrawal of the order, as provided in section 33.2, in appropriate circumstances.

I'll skip another point which is not so critical—I'll skip the next two. You might want to refer to the other comments, but I'll go to point (h).

(h) To the extent that I have studied the proposed changes concerning consultation, the sharing of information, reviews, appeals and matters of administration, they appear to me to be appropriate.

With respect to the third major area of change, Bill 68 proposes to make changes in the Health Care Consent Act which are intended to streamline processes of dealing with persons who lack capacity to make health care decisions. This is an area rather more complicated than I feel I can fully comment on since I haven't studied it enough. I've just recently returned to this issue, but I will make a few general comments.

First, it still seems to me that the provisions in section 33 of the Health Care Consent Act will not permit the system to respond to the needs of people with serious disabling psychiatric disorders who are non-compliant. I appreciate the thrust of Dr Musgrave's testimony earlier and applaud all efforts at voluntary services, getting people to co-operate by making sure services are available, attractive and relevant. At the same time, there are a small number of instances where you're dealing with people who simply will not co-operate unless there are some meaningful powers in the right hands to be able to ensure they get treatment, whether they or their substitutes will agree or not.

In dealing with persons suffering from seriously disabling psychotic disorders, it is vitally important that psychiatrists and others be given the authority to provide treatment as quickly as possible. If the authority for treatment cannot be given by the person himself or herself, it should come quickly from someone else who is in a position to provide the authority. If there is no authority to provide treatment, in my opinion, except in rare instances of short duration, there should be no use of hospitals, physicians and other staff in the health care system to detain people. Health systems exist to provide health services. I do not consider it appropriate that hospitals and medical and related professionals be used to detain dangerous people who cannot be treated. In such cases, the public merits protection, but responsibility for this should be exercised by other institutions, not by the



health system. I have to question whether section 33 contains—I think it's section 33 of that act—provisions that ultimately allow for all providers in the system, no matter how good their intentions are or how assertive they may be in their approach, to actually be helpful.

I will conclude now with very brief reference to some Saskatchewan data. I've said several times I'm from Saskatchewan. I had a hand in the development of the legislation there and know something of the experience up until recently. I can tell you that under the Saskatchewan system, where provisions for CTOs were enacted on July 1, 1996, there has been an average of 50 to 60 CTOs per year since that date. The numbers vary a little bit, but let me remind you that in Saskatchewan the maximum duration of a CTO is three months. If you take the number 60 and divide it into four, because you have four three-month periods in a year, that means that at any given time we have approximately 15 persons in Saskatchewan subject to CTOs.

If your experience were to be similar in Ontario, even with clauses having somewhat different provisions here and there, you would have something in the order of 150 in the province, grand total, at any given moment or a total of 600 actual—well, I don't know if you'd have 600 CTOs issued, because your duration is longer. But if the provisions were otherwise similar, you'd be having about 150 under CTO provisions at any given time.

Generally, people do not remain under CTOs for very long periods of time. Generally, there are one or two renewals after the first one is issued. We don't have people remaining endlessly under CTOs. It seems that once people have been under CTOs, they actually experience some success of living in the community in a treated condition, and they actually continue being compliant with treatment. It's no longer necessary to issue CTOs.

There has not been a formal evaluation of CTO provisions in Saskatchewan. There's been some research, some of which I've published, together with Dr Richard O'Reilly of London, Ontario, but there has not been an in-depth evaluation of that legislation.

In the end then, I would like to just make this statement: that mental health legislation needs to strike a balance between the rights of the individual, protection of society and the interests of caregivers, including family members, other primary caregivers and professional service providers. I do not hold to a dogmatic position favouring one of these three over the others. I have great respect for individual rights and would allow a wide margin of tolerance for privacy, idiosyncrasy and eccentricity. But I would draw the line at serious danger of harm to others, especially where danger is presented to people who are particularly vulnerable, especially children and others living in intimate relationship with a person or who are innocent bystanders. I personally favour strong powers for state authorities, police, courts and psychiatrists when providing health services and, simultaneously, serving a control function, coupled with strong safeguards against abuse of power, such as strict accountability, monitoring, reviews and appeals and so

on. I see Bill 68 moving in this direction and applaud again those who have developed the legislation.

As important as mental health legislation is, it only provides a structure, a legal and policy framework within which people may act. To be effective, it must be accompanied by an adequate system of services which are accessible, responsive, accountable and delivered by qualified staff with compassion and commitment, intelligence and discretion, willing to do their duty and to go beyond the call of duty, even to take risks on behalf of the people whom they serve.

Thank you for the opportunity to make the presentation.

1640

**The Vice-Chair:** Thank you very much, Mr Elias. We certainly appreciate you coming here today to provide us with your commentary. My apologies for some of technical difficulties. We have however taken, even with allowing extra time—so I'm going to ask that we just have questions from one caucus. We are in rotation at the government members.

**Mr Brad Clark (Stoney Creek):** Two quick questions, Doctor, if I may. One deals with a comment you made regarding section 33.1 of the act. You suggested that perhaps we should be adding the terminology "has been an involuntary patient in a psychiatric facility on two or more separate occasions" etc. As opposed to not clearly delineating whether they're voluntary or involuntary, you're suggesting that they should be involuntary and remove the opportunity for voluntary.

The other thing I wanted you to address for me is, there was a North Carolina study that dealt with the reduction in victimization as a result of the use of outpatient commitment or CTOs. Do you have any comments about the reduction in victimization of mentally ill people who are actually on outpatient committal?

**Dr Elias:** I am not able to give you a real answer to that question on the basis of the Saskatchewan experience. The literature does state exactly as you have mentioned in reference to the North Carolina study. There are quite a number of other studies that are in the published literature that make exactly that same point. Unfortunately, in Saskatchewan there has not yet been a formal evaluation of it, so I cannot say honestly whether we've seen a reduction of victimization or harm.

**Mr Clark:** The other question was, you suggested we should clarify that it would be an involuntary patient.

**Dr Elias:** The recommendation I made was that the threshold criterion which is written into one of the sections of the bill be made more specific so that the threshold criterion in referring to number of previous hospitalizations or number of previous days in hospital refer only to periods of time when that hospitalization was involuntary. That is the point I'm making.

**The Vice-Chair:** Thank you very much for being here today to provide us with your insights.

**Mr Richard Patten (Ottawa Centre):** Can I ask through you, Madam Chair, if on behalf of the committee we might request—your research with Dr O'Reilly, I



gather, is pretty recent, because we haven't seen it. Would you be prepared to share that with the committee? Not right now; I mean send it to us.

**Dr Elias:** Most certainly. I'll be happy to send that either to Mr Patten or to the clerk.

**The Vice-Chair:** Through the clerk's office would be the appropriate thing.

**Dr Elias:** I'd be happy to do that. I shall send a copy.

**The Vice-Chair:** Thank you very much for coming today.

#### PARKDALE COMMUNITY LEGAL SERVICES

**The Vice-Chair:** I'd like to call on Parkdale Community Legal Services. For the sake of our technical difficulties here, I'm going to ask you to use one of the microphones on that table there. Thank you very much and welcome to the public hearings. You have 20 minutes to give your presentation.

**Ms Peggy-Gail DeHal:** My name is Peggy-Gail DeHal. I'm a community legal worker representing Parkdale Community Legal Services. I'd just like to let you know that I will submit a copy of what I'm speaking about today at the end.

I come here today as a representative of Parkdale Community Legal Services, an anti-poverty clinic servicing those with low income in the Parkdale area. Because we're an agency that provides free legal services to the poor, we frequently work with many individuals living with mental illness. This is probably due in large part to the province's largest psychiatric facility being located in our community.

During the 1970s, there was a movement to deinstitutionalize individuals by helping them re-enter the community with the introduction of medications. This created a spilling of many individuals into a community that was ill-prepared with resources. The issues of housing, poverty, unemployment and mental illness became bred as social problems without an easy or quick fix.

It is our agency's mandate to work as legal advocates for those marginalized in our community by poverty. Unfortunately, many of these individuals are also living with mental illness, emotional distress and, for some, the everyday strains of living in the margins of their community.

Today, I not only represent Parkdale Community Legal Services but the number of psychiatric survivor and consumer-survivor groups we work with in the Parkdale community. I stand here today as an advocate for those living in mental institutions, mothers whose ill children have been reduced to guinea pigs, five-year-old children lethargic and vacant from Ritalin.

Mental illness does not just happen. Susceptibility requires a stressful trigger, such as deprivation, abuse, violence, incarceration or a history of psychiatric drug use. Today, an excitable child or one who exerts too much energy is given such labels as "learning disabled," "attention deficit disorder" or "hyperactivity" while

frustrated and tired parents agree to psychiatric medications as behavioural control without fully understanding or knowing of the damaging side effects. How can a small body, full of life and requiring a special kind of love and patience and understanding, start consuming deadly chemicals that alter their developing minds and stay trapped in their small organs? The statistics are staggering. You only need to check how many prescriptions drugstores fill a day, a week, a year. Take notice of the many psychiatric prescriptions filled by drugstores for children in poor communities. How can we not advocate and provide other resources when there is such a fine line between mental health and mental illness?

Most people who have gone through the psychiatric system do not just wake up one day and feel like their soul was sick. Many end up there because of a lack of resources, knowledge and general acceptance of illness that can so drastically alter behaviours. I am referring to those on our streets, in our hostels, whose poverty limits their options and forces them into the system, forcibly consuming medications whose side effects guarantee a chemical dependence so that they cannot be here to speak for themselves today. This is the kind of advocate I appear as today.

Parkdale Community Legal Services endorses the views of the No Force Coalition, the Psychiatric Patient Advocate Office, the Canadian Mental Health Association, family groups and medical professionals who are opposed to the amendments proposed to the Mental Health Act, in particular the introduction and implementation of community treatment orders. Our agency feels that any legislation seeking to take away an individual's choices is a violation of our rights under section 9 of the Charter of Rights and Freedoms.

We believe the existing Mental Health Act addresses the issues of treatment for those unable to make decisions for themselves. Because there is a process of certifying an individual through forms, the problem is the understanding and use of the act. There already exist provisions for detention as a patient can be certified for three months while in the community in section 27 of the act. The Substitute Decisions Act will provide an individual the opportunity to decide the nature of treatment they desire in times when they are deemed incapable of making such decisions themselves. If the Substitute Decisions Act and consent to health care act were used effectively, community treatment orders would not be necessary. Forcing people into locked facilities until they are medicated and paroling them in the community is criminalizing those most vulnerable.

Dr David Goldbloom, physician in chief at the Centre for Addiction and Mental Health, states, "The problem is not the current act itself but the understanding of the act and the use of the act..." If it was better understood, if it was less cumbersome to use, it would be used more. The form 1, which any physician in Ontario can fill out to bring someone to psychiatric hospitalization for up to 72 hours, is a terribly constructed form. It is almost guaranteed in its crafting to be filled out incorrectly.



1650

We support the right of consumers and psychiatric survivors to make their own decisions about health care. We oppose the treatment of mental illness as different from the right of individuals to make informed choices about life-threatening illness or accidents. We strongly believe that a vital part of making a safe and healthy choice about one's care would involve real choice: the ability of diverse resources in the community, not legislation that takes away an individual's rights because they refuse to be medicated, and because they refuse to take medication that often has damaging and immobilizing side effects or provokes a state of lethargy.

Community treatment orders constitute arbitrary detention, offending an individual's right as permitted in the Charter of Rights and Freedoms. This legislation does not recognize that forced medication is chemical incarceration, whether in a psychiatric ward or in the community. The side effects can be damaging, particularly for someone who has been exposed to multiple psychiatric medications over a period of time. Community mental health services must include the provision of alternative options to neuroleptics that have brain-damaging effects such as clozapine, zyprexa and Haldol.

Families should not be put in the position to make choices for loved ones when the options are limited to psychiatric drugs, unavailable hospital beds and limited or non-existent resources. Families need services that work towards better mental health while maintaining an individual's rights and dignity and assist in resolving social inequalities they experience as a result of their illness. The existing health care system has put families already in a state of exhaustion where it is easier to accept quick fixes so their loved ones are spared from being demonized because of their mental illness.

Resources need to be put into the community to provide real options for those who are mentally ill or in need of emotional intervention. This government has cut so many services and social provisions for cost-effectiveness while the proposed ACT teams cost a disproportionate amount of money and can only service a limited number of individuals in need. Those same dollars can be spent opening up a number of services, enhancing training programs, providing people with social assistance programs so they can be adequately housed and fed. If this is not about dollars, then it has to be about social cleansing. This government must invest in community resources, not in chemical compliance. Forced treatment violates the rights of the individual.

I have spent the last seven years as a front-line worker for homeless youth and men and women who have been in conflict with the law. It is easy for me to make the connections around how systemically people can be driven to mental illness if they are susceptible, as I have seen how single families and individuals have been reduced to homelessness, unemployment and illness. Suicidal thoughts have been an increasingly common response to these circumstances. In our society, particularly the laws that criminalize the poor and homeless, are

worded and legislated separately, yet so many of the same individuals are recipients of multiple doses of legislation that hide them from visibility in prisons and on psychiatric wards.

Most individuals are not homeless because they are mentally ill; they are mentally ill while being homeless. The proposed community treatment orders target the most marginalized population in our communities, people who are isolated from supports and who are living in transience.

During my time as a front-line worker I saw the increasing impact legislation has had on those living in poverty. The National Council of Welfare says the poor are more likely to be arrested, charged, denied bail and convicted than other people. They are more likely to appear in court without a lawyer. The city of Toronto food and hunger action committee's preliminary report finds a growing food crisis in our city, with 20% of Torontonians unable to afford basic needs and facing difficult choices such as paying rent or buying food. The report identifies that cuts by senior levels of government to social programs and a serious lack of affordable housing are seen as pushing hunger to a critical point in Toronto.

Instead of solving problems, this unnecessary legislation panders to public fear and ignorance regarding mental health.

In a report on the consultative review of mental health reform in the province of Ontario, Dan Newman suggests that while moving ahead to reform the mental health system our government must use the following guiding principles:

Our government should focus mental health reform on the quality of life of individuals with serious mental health problems;

Our government should recognize the importance of a holistic approach to the mental health system, one that addresses the broader determinants of health, including housing, education, jobs and income support;

Our government should focus on creating an integrated and comprehensive system of mental health services which provide a continuum of care for those who need it, from prevention to community and in-hospital treatment.

What conflicts here with proposed amendments to the Mental Health Act is that these amendments to the act will not enhance the quality of life for individuals with serious mental health problems. Forcing human beings to be drugged without choices violates their rights. Those with disease and physical illness are given the choice whether to take medications with damaging side effects or not, just like those charged with a crime are given a fair trial and a release date at the time of sentencing.

Community treatment orders are unnecessary. As the Canadian Mental Health Association points out, "The Health Care Consent Act and the Substitute Decisions Act, if used properly, permit treatment of a person found incapable of consenting to treatment." If both these acts were made available and accessible to those at concern



here, they would be able to participate in their own treatment and care.

Many will agree that successful treatment depends on the consented participation of the individual. How can such an act enhance the quality of life for individuals when there is no requirement for doctors to inform their patients of the deadly side effects some of these medications can have? Further, what about the enormous profits to be made by pharmaceutical companies that will gain guinea pigs served up by the state?

The importance of a holistic approach is also at issue here. How can we trust that this government shares the same notion of holistic approach as the community does? The very community agencies that service marginalized individuals have been struggling for years under increasing reduction in program and staff funding at the same time there has been an influx of people with mental health issues in their offices.

The resources to service this influx are not there at the community level, at the academic level or at the medical level. Colleges and universities do not offer full-time diploma programs focused on community mental health. How can Mr Newman propose a holistic approach when communities have seen decreases, not increases, to program resources?

In recent years, the introduction of Ontario Works and Ontario disability support programs disentitled many from financial assistance who were in need. When, reluctantly, this income is granted, the recipients are policed and criminalized for needing it.

At the same time that hundreds of people were disappearing from the system and moving into hostels and on to the streets, the government took away rent control, landing many people in a cycle of homelessness, transience or below minimum standards of accommodation. If the maximum general welfare cheque is \$520, then one can only afford unpleasant accommodations in a boardroom in Toronto.

Given the restrictions to social assistance, there are very few people who would choose to remain dependent on the system on a long-term basis. They cannot go to the community for help, because reductions in social spending and community-based programs have long waiting lists, burnt-out staff, inadequate resources and are busy competing for the few dollars that have been waved before them. If they happen to lay their head on a street corner or beg for food or money, they are thrown into jail under the Safe Streets Act. I am not willing to participate in stripping people of their dignity because of illness or distress.

This is a legislation that has controversial implications. It can be presented as a resource for families and individuals, but when all other options are non-existent there are limited choices, especially in the midst of a crisis.

We at Parkdale Community Legal Services do not see this legislation as an isolated form of social control. We couple it with changes to rent control, social assistance, workers' compensation and employment insurance pro-

visions, as well as the depleting funds of vital social services in our communities across the province. The increase in deaths due to cuts to hospital beds and cost-saving measures is no longer invisible.

To this end, once again we raise concerns about the violation of an individual's rights under the current proposed legislation, since we believe the existing act makes provisions for care decisions, supervision, apprehension and detention in a psychiatric facility.

It is of importance that this government recognize their systemic dismantling of resources and how this has contributed to homelessness, increased poverty, unemployment, inaccessible education, health care that can kill you and the violation of an individual's rights in the name of public safety.

Have you been held accountable for the state of poverty you have created and have you stood trial for the lives you have taken in order to shift these dollars to the private sector? We all know you have not and you probably will not. That is not why I am here today. I speak for those frustrated, affected, marginalized and criminalized because of oppressive legislation that targets the working class, the poor and some of society's most vulnerable individuals.

1700

**The Chair:** Thank you very much. That leaves us with about two and a half minutes for questions. This time I'll give the time to the Liberals, in the rotation.

**Mrs McLeod:** I'm very appreciative of what you said during the course of your presentation about homelessness and the mentally ill, and very aware that certainly in my community in northwestern Ontario it's as true as it is in Toronto—maybe just of a different magnitude in Toronto—that we do not have the affordable housing, let alone the supportive housing, that's needed to provide the living conditions that would be much more optimal for those with mental illness.

I wanted to ask you, in your experience, do you feel there are people who, because of their illness, would not be able to access whatever housing support or even treatment supports that would be there? I know we don't have all of this, but even if we had all of the community supports—the housing, the treatment supports—there would be people, who, because of their illness, couldn't access that, couldn't even stay in a supportive housing situation?

**Ms DeHal:** Part of what we've noticed is that people's inability to afford accommodation that they choose has become an issue. There are certain kinds of housing accommodation available for somebody who is on ODSPA or Ontario Works. Unfortunately, the provisions for rent do not allow for acceptable housing, and a lot of times these very same people do have to move out.

Of course, there are the issues that happen with an individual who can't keep their housing because of their illness. We feel, however, that the lack of resources—and this has been noticed by many other front-line workers whom I have worked alongside with, and we've done this work on the streets as counsellors and in various sectors



all over the city. A lot of us have noticed in the last five years an incredible number of people who are mentally ill and are being kicked out of their apartments. Many of their rights are being violated by their landlords, though, because they can and because they are vulnerable.

Sure, we'll never be able to provide the right of amount of resources, but if we could at least provide intervention services to be able to facilitate healthy living, we might be able to assist people in making some choices when they are well. Not eating food every day, having to go out to the food bank once a month, producing ID to get that food, and often that food at the food bank isn't—people don't give away fresh food, and we know that. A lot of people in our community are dependent on food banks and can't find jobs and don't have ID at times and go into hospitals services, and because they've been there so many times, they get kicked out by emergency staff or they don't receive beds.

So it's more than a revolving-door cycle; it's about a lack of resources and people's understanding of what mental illness is. We want to understand what we see, and it is very horrible what we have seen on our streets over the last couple of years. Yes, there have been some violent implications of the lack of resources; however, these are individuals in our community whom we have as much accountability to as we do to do those who are living in private accommodation.

**The Chair:** Thank you very much for coming before us this afternoon. We appreciate your taking the time to be part of our proceedings.

#### ASSOCIATION OF ONTARIO PHYSICIANS AND DENTISTS IN PUBLIC SERVICE

**The Chair:** That takes us to our next presentation, the Association of Ontario Physicians and Dentists in Public Service.

Good afternoon, welcome to the committee. We have 20 minutes for your presentation. You can divide that as you see fit between presentation or question-and-answer period. Perhaps at the outset, as you're probably planning to, you could introduce yourself for the purpose of Hansard.

**Ms Debra Eklove:** I thank the committee on behalf of the association for giving us the time to present to you. My name is Debra Eklove. I'm the executive director of the association. With me are members of the association who are all psychiatrists working in the psychiatric hospitals. To my far right is Dr Bill Komer from St Thomas, Dr Michael Chan from Kingston, and Dr Federico Allodi from Queen Street, which is now the Centre for Addiction and Mental Health. Dr Allodi will begin our presentation.

**Dr Federico Allodi:** First of all, I would like to make a general statement and then we'll go into specifics.

The Association of Ontario Physicians and Dentists in Public Service would like to express its support for the proposed legislation, because it is in favour of providing and improving the care of the severely mentally ill pa-

tient, and particularly those patients who are not covered by the present section 15 of the Mental Health Act; namely, those people who, because of their mental illness, pose a physical danger to themselves or to other persons, or because they put at risk, imminent risk, their bodily health, and yet these people who do not comply with treatment may endanger and deteriorate in their mental health. Those are basically the people this bill, the legislation proposed by this Legislature, is addressing. We support that.

We support it for two reasons. First, although a mechanism already exists to provide service to those patients who do not fit any of the three main criteria already existing in the Mental Health Act, they still pose a risk for deterioration in their mental health. The mechanism that exists is cumbersome, distressing to the patient, involves the patient within the judiciary and correctional system and is dilatory in the treatment of the patient and costly to the community.

I will not go into the details of how we have to wait, psychiatrists or physicians sometimes, until the family, for some reason—and sometimes after a year or two of persuasion on our part—will consent to criminally charge this mentally ill young man or young woman because they have taken the car without permission and driven to California, to end up in disaster and waste. Then we persuade them to charge these mentally ill persons so they can come into the judicial system and then the judge can make a decision to provide for these people a parole system on condition that they obtain psychiatric treatment under a psychiatrist. It is only through this manner of circumvolution we manage to provide psychiatric treatment for these patients.

The new act intends to bypass this costly and distressing mechanism. The evidence that it will be so is first in our cumulative experience as psychiatrists, and on the research evidence provided by the North Carolina group and other groups, including Dr O'Reilly, from whom I have received information. It is indeed a mechanism that will reduce mental hospital admissions from 50% to a five or six time reduction. The evidence is very considerable that it will be effective in providing treatment and reducing admissions.

On the specifics of the proposed legislation, we have looked at the section tending to modify and, in our belief, improve section 15 of the act. In fact we see that what is added is a new or fourth criterion, the criterion of compelling or assisting these mentally ill persons to receive treatment on an outpatient basis on the grounds that non-treatment will increase the risk of deterioration of their mental health. This is a new criterion, and we are satisfied that the conditions for the application of this criterion are wise and sensible, both permitting the implementation and respecting the freedoms and rights of the individual patient.

There's much less, we have to say—we in our association agree with the Ontario Medical Association position that this new service should be implemented with adequate resources. By "adequate resources" we mean they have to be appropriate to the intended program.



1710

We do not believe that we have to delay or that we should ask you to delay the implementation of the legislation until all resources are in place and to the satisfaction of everybody. We would be satisfied that a clear mechanism for responsibility and the delivery of resources and a statement of commitment to deliver the resources be made. By "resources" we mean mostly staffing, training of the personnel, supervision by senior and experienced physicians, material equipment when necessary and the sufficient and necessary administrative support. This is what in general terms the association would like to state. Thank you.

**The Chair:** Is that the extent of your comments or would you like to open up to questions now?

**Dr Michael Chan:** If I could just make a few brief points?

**The Chair:** Please.

**Dr Chan:** Just to continue on, I think this is a long-overdue and necessary legal tool. I think this will be the linkage or the glue that will make the community resources or services link up with patients, especially non-compliant or refusing patients who are so ill that they are unable to seek out the necessary help themselves and to get it. I think this legislation will provide the necessary continuity of care of patients as they move through the system from the hospital into the community and ensure continuing treatment. The research from North Carolina and also Iowa has supported that you need a six-month time frame to really begin to see benefits, and I think that six-month time frame is an important one.

My own background in Kingston is in the forensic system. People have called us a parallel framework for ensuring continuity of care, and I've seen it work and work well. Once people are hooked up and linked in with the system, once linkages are there, the services can flow smoothly and the patients are usually very grateful.

I would agree with previous speakers who emphasized the need for community resources to make this framework successful. The literature clearly has also stressed that.

One other point that the literature has made, and Mr Clark raised that, was that the Swanson study, coming out of North Carolina and reported a month ago in the *British Journal of Psychiatry*, made the very strong conclusion that it reduces victimization and it reduces criminal recidivism in the community. Really, with an ideal and properly resourced psychiatric system, the forensic system would perhaps go out of business, an important point to make. The forensic system reflects inadequacies elsewhere in the system.

The community treatment order model I think has to be clear and has to be easily implementable, with clear entry points, clear mechanisms for care pathways and also a way of enforcing it should it break down with respect to compliance. I believe that the procedural safeguards with respect to rights advice and appeal mechanisms to the review board are adequate. I've also seen

those appeal mechanisms significantly delay much-needed treatment of people already on the in-patient side.

In general I would be very supportive and I would say this is long-overdue. Our neighbours to the south have been ahead of us, and I would strongly urge this Legislature to proceed with both the changes to the commitment criteria and to section 33 on the community treatment orders.

**Dr Bill Komer:** I just have a couple of points to add, just to emphasize again that I think the legislation is long overdue. Since about 1960, we've seen the numbers of individuals in psychiatric hospitals significantly decrease, and the provision of treatment is more in the community than it is in the hospital. The Mental Health Act, however, has not kept pace with that change and typically provides a framework for treatment and management of patients inside of a hospital. It does not have any framework for management outside of the hospital. I think in default, because the legislation hasn't evolved as the treatment has evolved, we've seen the Criminal Code acting as that Mental Health Act last resort, so we've seen individuals being criminalized.

Just as a general point, I think you should try to have the legislation as simple as possible so that the practising front-line physicians and clinicians can understand it and use it practically.

I want to emphasize again the issue of resources. One wants to have a framework in place but one also wants to make sure the resources are there so that these orders are actually made.

**The Chair:** Thank you very much. That leaves us with about seven minutes for questions. This time the rotation will start with Ms Lankin.

**Ms Lankin:** Thank you very much. I appreciate your presence here today.

If we started from a premise that we all agree with the intent of getting help to that very small population that a lot of people have talked about that currently is falling through cracks, I think we would also agree that we want to make sure that the actual words in the law we're passing do that. I want to put to you a concern that I have with the words, not the intent. I'm not going to differ with anything you've said. I just want to see if you have any similar concerns with how we get to the end goal.

The law as it's written, as I read it, allows a doctor in the community to determine that a patient meets form 1 criteria, simply that that person meets the criteria that could compel them to be taken for an assessment. They don't have to fill out a form 1, they don't have to send the person for an assessment, a psychiatrist doesn't have to be involved, no assessment has to be done, and the person would be put on the community treatment order if they meet those criteria and some other criteria.

Some of those other criteria are things like, they have been in a psychiatric facility before, not even detained in, as in the Saskatchewan legislation, involuntarily detained; they've gone voluntarily. If they've been in before, that helps meet some of the criteria. Surely—let me not prejudice this. In my view, I don't think that describes the population you're talking about.



I'm interested in ensuring that we have someone get a psychiatric assessment, that a psychiatrist is involved in building a plan, that they are involved in the assessment that says this person first of all warrants committal, that this is a less restrictive way and this person can be successful in the community with these conditions. I feel that the current steps that are set out are too broad in some ways and too narrow in other ways. Have you looked at the detail—you say you support the legislation—the detail words? Are you comfortable with that process I've described in the legislation, or is it the intent that you're saying that you support?

**Dr Allodi:** It is basically the intent, but also, without being a lawyer, I'm familiar with this form of procedure and am satisfied, as far as I can see, that it's adequate.

Your specific concern with the criterion or the necessity of being a mental hospital admission not necessarily involuntarily I think is adequate in the sense that mental hospital admissions are very rare these days for people who have not a very severe mental illness. Then they may shorten the necessity to select carefully the patient for admission to a mental hospital. I would say that almost all of them are severely mentally ill and need admission because of severe crisis and severe disruption of their mental function in the community life. So the fact that it is simply an admission, not necessarily a previous involuntary admission, nowadays doesn't make a great deal of difference. The thing is that it's strong criterion still.

The fact that it is an MD, not a specialized psychiatrist, who would be able to certify a patient is balanced by the fact that it's only three days, which go very quickly, and immediately, in fact the same day, a psychiatrist will be consulted upon the admission of this person.

**The Chair:** Ten seconds. We've already gone well into the time of the other parties.

1720

**Ms Lankin:** In fact, what I'm telling you is that the legislation does not compel the person to go for three days to see a psychiatrist. It's simply saying, if I think as a doctor that you meet the criteria that I could send you for an assessment, I can put you on a CTO without the assessment or a psychiatrist being involved.

**Dr Allodi:** But if the patient refuses the alternative information—

**The Chair:** Thank you, Ms Lankin. We have time for very brief questions from each of the other two parties. Mr Clark.

**Mr Clark:** A brief question. Section 33 of the act proposed—this question has come up before and I'm wondering if we can get a comment from you—states that "a physician may issue or renew a community treatment order under this section," and then it goes into a number of clauses. The question that has come up before is, do physicians, general practitioners, have the capabilities and understanding of mental illness? Do they have that ability to issue that community treatment order? The act simply states that a physician may do it. So

should it be a qualified physician, that there should be some, I don't know, certification process that a physician would have to take in order to be able to do it, or can a general practitioner do it? A comment from you folks?

**Dr Komer:** I think ideally you want to have a psychiatrist, but there are going to be situations throughout the province where you're not going to have a psychiatrist, and one would not want to have this treatment order not be available to a person who needs it because there's not a psychiatrist. But I would agree; I think by and large a psychiatrist is the most trained to do that. There are some family physicians who have much more of an interest in mental health issues and there are some that do not. That's why I think one should try to keep it as simple as possible for people to understand the forms and to complete them.

I wanted to pick up on a question that's related somewhat, because it is about section 33. I think one doesn't want to get too complex. I think 33.1(2)(a)(i) talks about the patient previously, over the last three years, having been in hospital. I think that gets a little too specific and arbitrary. I think it would be important to look at mainly the criteria that are in (b) and (c) and below that deal with the person's need to be on this order. My reading of it is that a physician needs to at least do an assessment and come to an opinion that this person needs to be on this order because of certain needs of that person. I think there are the safeguards that you are concerned about. At least it says in there that there needs to be the opinion of the physician that the person has a mental disorder and needs treatment.

**The Chair:** If I could ask you to keep your answer fairly brief, please.

**Dr Allodi:** The current application of the Mental Health Act, if anything, really shows how shy physicians and psychiatrists are in applying that section. Last month a family physician who knew this patient very well for many years, and also a group of physicians who do emergency visits, both refused to visit the patient in their home and issue a certificate of involuntary admission. If anything, this new procedure is going to be used very rarely. If the physician is unwilling because of lack of familiarity, he or she will seek a consultation or refer the case to a psychiatrist, which is the usual mechanism. On the other hand, we should not underestimate the new training of medical school students, in which I have participated over the past 20 years. In resources, we should make sure this is adequately covered in the finishing year of the medical students.

**Mr Patten:** Thank you for coming today. I'll have to be quick because we're running out of time, but I want to establish one thing: Those who are against this legislation continue to say that there are provisions already, that section 27 provides the option. There was a quote this afternoon referring to Dr Goldbloom. I have a paper by Dr Goldbloom, who is the physician in chief at the Centre for Addiction and Mental Health, where he says, in applying section 27 in his particular institution, that it was reviewed by a board hearing at the centre and was



not upheld as being used as a community-based treatment of a certified patient, which is one of the motivations, in fact, to attempt to deal with this. But that mythology continues to perpetuate in the community, especially for those working on a community basis. Would you comment on that, please.

**Dr Allodi:** I must add, and question the date of that document of Dr Goldbloom's, because Dr Goldbloom changed his mind after that paper and was in favour after he conducted with a colleague of his, Dr Zipursky—

**Mr Patten:** This is that paper. I'm saying he's—

**Dr Allodi:** You say he supports it.

**Mr Patten:** I'm saying he's supporting the CTO or CTA of whatever you want to call it on the basis of the leave not being permissible. Section 27.

**Dr Allodi:** Section 27 leave of absence is rarely used and not fully utilized. Correct.

**Mr Patten:** That's right. OK.

**Dr Allodi:** The only mechanism I am aware of that has a similar continuity of care is the forensic system, which is based on the federal Criminal Code. To enter that system you have to be criminalized. You have to go through the criminal justice system, be incarcerated sometimes and eventually get across to the psychiatric end of the system. It's a very costly way to go about it. I think if there is a direct link into psychiatric services, and not necessarily going through the criminal justice system, that's the way to go. I think that's what this is about.

**The Chair:** Thank you very much, gentlemen and madam, doctors all, for coming before us. We very much appreciate the expertise you brought to these hearings.

#### YVONNE JENSEN

**The Chair:** Our next presentation, Ms Yvonne Jensen. Please come forward. Good afternoon and welcome to the committee. We have 10 minutes for your presentation.

**Ms Yvonne Jensen:** I'd like to begin by saying that I have worked at what used to be called the Queen Street Mental Health Centre for a total of 16 years. I have worked in the capacity of psychiatric nurse, clinical instructor in psychiatry for nurses and as the chaplain. As you see, I am also a survivor. When I first decided that I wanted to address this issue, it was for that reason, because if CTOs had been in effect in 1971, I would not be here today, nor would I have had the chance to continue with my education. I am grateful for this opportunity.

About a year ago, I took a leave of absence from that institution, Queen Street, where I was working as the chaplain, because I had a great deal of difficulty with feeling that I was part of legitimating that institution. I was visiting every week a woman on a ward who was receiving treatment against her wishes and who died on the table receiving ECT. She was revived and she continued to receive ECT against her wishes. I visited her every week and said, "I will see you next week." The woman sat in terror from one week to the next, saying, "If they

don't kill me this next time, you will see me." To me, it is unthinkable that anyone should be sitting that way week after week, month after month, fearing for their life.

James Hillman, a very famous psychologist, has said we have had psychotherapy and we have had psychiatry "for a hundred years and the world is getting worse." Psychiatry has become the gatekeeper for society. Psychiatry decides who is in and out and has the status and prestige of a science. But the way diagnostic categories are arrived at is not scientific, and mistakes are made all the time. This is well documented—there is a mistake in the reference—by Paula Caplan in her book *They Say You're Crazy: How the World's Most Powerful Psychiatrists Decide Who Is Normal*.

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However, once a person has been diagnosed and is prescribed treatment, it's very rarely without drugs, because people who refuse drugs when seeking help and/or admission are often asked, "If you don't want medication, why are you here?" I have heard this; I worked for five years in the admitting department of Queen Street Mental Health Centre: "We are the experts. If you won't follow our advice, why are you here?"

The patient is administered drugs which are often dangerous and once into the treatment process, there is no way to correct the situation. People are trapped in the treatment process with no possibility of reassessment. I'm not saying a person isn't regularly reassessed; they are. But once they receive these debilitating drugs, they are no longer the person they were.

In 1971, I had one of these injections, my first and last. I was discharged, and after two weeks when the medication wore off the hospital phoned me up and said, "Unless you come back and receive another injection, you will become very ill." But that was the very worst two weeks of my life. I could not imagine how I could not kill myself because of the way that drug felt.

I had to hide from the system for years. It was lonely, and it was frightening. I am speaking here today because I am afraid that with CTOs in effect, many people are not going to seek treatment. They are going to be afraid to seek treatment to discuss what kinds of thoughts and feelings they are having. We're just going to create a whole underground of people who cannot access the resources that the taxpayers think they are paying for in order to protect the vulnerable. Also, there are dangerous physical side effects of psychotropic drugs, which I'm sure you are well acquainted with at this time.

In *Touched With Fire*, a book that talks about people with mood disorders, there are numerous accounts of our most famous artists, musicians, writers and poets, all diagnosed with mental illness, all of whom could have been medicated, in which case we would not now be enjoying the fruits of their labours. Schubert, Van Gogh, Emerson, they're all in there. You name the artist and you can almost be sure they are in there, and you can read that for yourselves.



Some patients commit suicide because their lifestyle becomes such that life isn't worth living. One patient managed to get better, to the point where he was ready to start his own business, creating and selling fine jewellery. He had a relapse related to his environment and was restarted on neuroleptics. Neuroleptics inhibit right-brain function. They decrease creativity, they decrease motivation and they inhibit the ability to imagine. This man ended his life. These are just a very few cases. There are many, many people who are victimized like this.

The violence myth: The media would have us believe—every time there is a mentally ill person who commits a violent act, it says in the newspaper, “This person was mentally ill.” But in all other cases of violence reported in the newspaper, when the person is not diagnosed with a mental illness, the newspaper does not say, “This person was not mentally ill.” I would suggest that we start asking, “What kind of a society are we that generates so many people who simply cannot adjust to our society?”

The fact that violence among the mentally ill is a myth, or that there is a greater danger there, has led me to question the motivation behind this proposed legislation. I think it's political rather than rooted in deep compassion and a real desire to help people who are mentally ill.

Mentally ill people know what they need and are asking for what meets their needs, but we're not asking them, “What do you need?” because once a person has been diagnosed with a mental illness, they are already a write-off. Their judgment is off, and they are not taken seriously. People need adequate housing, food, meaningful work, the right to education and mutual respect, just like all the rest of us.

In *Recovery from Schizophrenia*—and this book is used as a textbook at the University of Toronto, the School of Social Work—Dr Richard Warner, medical director of the Mental Health Center in Colorado and associate professor at the university, argues: “We have been too pessimistic about the cause of untreated schizophrenia, and overconfident about the benefits of modern treatment. Despite the increased use of new anti-psychotic drugs and massive annual investment in the treatment of schizophrenia, the outcome from the illness in modern industrial society is no better than in the Third World. Much of what is called community treatment is, in fact, the antithesis of treatment, resulting in people with psychosis living a life in which even the basic needs, such as food and shelter, are not met”—and such as security. Any one of us has only to visit some of the boarding homes over in Parkdale that I have had the privilege of visiting people in while I worked as a chaplain.

Since the media have targeted mainly the schizophrenic person, the following recommendations will address this population. We have far to go before schizophrenic persons are welcome in our society and before they can view themselves as equal, useful members of society. Until such a time, schizophrenia is likely to be a malignant condition. We have the knowledge to render this condition benign.

The recommendations are on the front page. We need to address concerns around psychiatry as a scientific profession. They make mistakes in diagnosis, with ensuing dangerous drug treatment. We need to look at the effects of medications. We need to treat the acute phase of the illness in small, domestic, non-coercive settings which reflect the humane principles of moral treatment. We need to ensure adequate psychological and clinical support in the community, including a full range of independent and supervised, non-institutional accommodation, and give recognition and support for the care offered by the schizophrenic person's family and provide family education and counseling.

We need to provide jobs and training for the mentally disabled, work which is neither too demeaning nor too stressful. We need to establish economic incentives to work and a more gradual reduction of disability benefits for disabled workers and wage subsidies for the severely handicapped. We need to encourage economic and social advancement through consumer-cooperative business, housing and services. We need to fight for the rights of people with schizophrenia and their families to participate as fully integrated members of our society, taking the issue before the public through the media, and then to use the anti-psychotic drugs as a supplement to all these measures, not—as often happens these days—as a substitute for all these measures.

The problem is so much bigger than focusing on the people we call the mentally ill, because if we were going to do all these good things for people with schizophrenia, we would also have to do them for all those people we call the poor people. We really all have the same needs, and if we did all those things for the poor people, then we wouldn't have an increase in people being labelled as mentally ill. We wouldn't have such a need for these CTOs even to be under discussion.

I have worked, as I said before, at the hospital, and I think the word “imminent” should definitely be left in the Mental Health Act. I think that if a person is imminently at risk we should intervene, but if they are not imminently at risk, we should ask them what they need.

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Parts of this plan would be expensive, but overall it may cost little more than our current vast expenditure on treatment and support of schizophrenic people and on the associated disruption, crime and imprisonment which result from inadequate care. Our society is inherently unequal, however, and to provide such a quality of life for the person with schizophrenia is scarcely feasible since such a large proportion of the population, including an army of unemployed, would be left in worse circumstances. To render schizophrenia benign, we may in essence have to restructure our provisions for all of the poor.

In ending, the recommendation I would make for all poor people, for all people in distress—it has worked for me; this is very personal, and this is why I am a chaplain—is prayer and a faith in a transcendent, merciful, benevolent being. A hope for the coming of that kind of



life moved by those sentiments on the earth is what helps most of all.

**The Vice-Chair:** Thank you very much for coming here today. You have taken the time that is available, and we certainly appreciate the insight that you've been able to bring to our deliberations.

#### CITIZENS COMMISSION ON HUMAN RIGHTS

**The Vice-Chair:** I'd like to call on the Citizens Commission on Human Rights, Robert Dobson-Smith and George Mentis. Thank you very much for coming here. I would just ask, for purposes of Hansard, that you would introduce yourselves.

**Mr Robert Dobson-Smith:** My name is Bob Dobson-Smith. I'm the president of the Citizens Commission on Human Rights. This is Mr George Mentis, who is the executive director of the Citizens Commission on Human Rights. I'll begin.

The Ontario government has introduced Bill 68, known as Brian's Law, an act to amend the mental health and informed consent laws of this province.

One official speaking for the government at a recent public consultation on this bill in Toronto stated that this bill was intended to affect 60 to 70 people at most in Ontario, yet its ramifications are far-reaching. Bill 68 will affect everyone in this province, in all sectors of society. Moreover, Bill 68, which includes the introduction of community treatment orders, will lead to widespread abuse of civil liberties and fraud.

At the root of community treatment orders are involuntary commitment laws. In addition to the violations of civil rights that such laws facilitate, there is ample evidence which shows that involuntary outpatient commitment does not lower hospitalization rates, nor does it result in increased public safety. A study done in New York City on December 4, 1998, by Policy Research Associates for Bellevue Hospital found that outpatient commitment had no statistically significant effect on rehospitalization rates or days spent in hospital. The study also found that outpatient commitment did not improve compliance with medication and continuation of treatment or reduce the number of arrests or violent acts committed.

The Bazelon Center, a clearing house on mental health issues based in Washington, DC, describes the New York City study as one of the most comprehensive and best designed studies of outpatient commitment released to date. The study sought to answer whether an outpatient commitment order contributed to any additional beneficial results when compared with patients who received intensive services without such an order. The findings, which the Bazelon Center describes as conclusive, found no additional improvement in patient compliance with treatment, no additional increase in continuation of treatment, no differences in rates of hospitalization, no differences in lengths of hospital stay and no differences in arrests or violent acts committed.

In the only released controlled study of the subject, it was found that individuals given the option of enhanced community services did just as well as those under commitment orders who had access to the same services.

Closer to home, when we examine the data from Ontario, we see a steady increase in people involuntarily committed to provincial psychiatric hospitals from 1990 to 1995. In 1990, some 13,365 people were involuntarily committed to psychiatric hospitals. By 1995, that number ballooned to 16,817. This translates into 48 people a day being locked up against their will in a psychiatric hospital. It is estimated that currently there are more than 70 involuntary commitments across Ontario every day. These statistics show that under the current legislation an alarming number of citizens are being committed, which contradicts the argument that stronger legislation is needed.

A basic assumption of Bill 68 is the fallacy that psychiatric drugs emptied the institutions and hospitals. Lacking any other evidence, this assumption—and it is nothing more than that—is relied upon to demonstrate the efficacy of these psychotropic substances. This proposition is a myth. It is true that psychiatric patients were sent out of psychiatric hospitals; what is not true is that this was caused by the efficacy of the drugs. What actually happened is that the media, human rights groups and others exposed widespread abuses in institutions across the country, and the psychiatric community found itself vulnerable. After all, before that time, patients were warehoused, heavily medicated, electroshocked, experimented on and worse, all without the slightest hint of public scrutiny.

Instead of cleaning up their act and providing medical treatment, psychiatrists moved patients into thousands of group homes across the province, like the homes for special care. Whether for-profit or non-profit, these facilities earned a lot of people a lot of money. There were approximately 21,000 psychiatric patients in Ontario prior to the homes for special care program being implemented. Afterwards, around 14,000 were transferred to approximately 2,500 of these private homes. Psychiatrists implied that these patients benefited from treatment, yet what occurred is that patients were taken out of regulated facilities and placed in ones where they were virtually out of sight.

These homes were, and are, little more than human warehouses for patients who are rarely seen by a health care practitioner and who are constantly kept in a heavily drugged state so that they will not be a management problem. This reduces costs and increases profits. After all, the highest expenditure in any health facility is labour. The Queen Street Mental Health Centre promoted a few years ago that they had a re-admission rate of 75%. If patients cannot be cured in a major psychiatric institution with tens of millions of tax dollars in funding every year, how will they be cured in a private home with nothing more than mind-altering drugs?

"We do not know the cause of even one major psychiatric disorder nor can we cure in a reliable way those



people who suffer psychiatric illness," stated Dr Paul Garfinkel of the Clarke Institute in 1996.

Dr Fred A. Baughman, a board-certified neurologist, said so-called biochemical disorders of the brain are a "fraud." Dr Baughman has discovered real neurological diseases and had his findings published in peer-reviewed medical and scientific journals.

"The fact that psychiatrists do not perform physical or neurological examinations by which diseases of the brain and nervous system are diagnosed make their claims of diagnosing and treating 'biologically-based' brain diseases unbelievable, a fraud. There is no physical or chemical abnormality to be found during life or at autopsy in 'depression,' 'bipolar disorder,' 'attention deficit hyperactivity disorder' ... or in any other 'mental illness.'"

The Charter of Rights and Freedoms protects from discrimination on the basis of age, colour, sex, religion and mental or physical disability. Clearly, Bill 68 is a revocation of this charter and will undoubtedly generate numerous legal battles, as it has in the US. The United States Supreme Court has ruled that involuntary commitment to a psychiatric hospital is "a massive curtailment of liberty." The court also emphasized that "involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the state cannot accomplish without due process of law." Moreover, the court has clearly stated that there is "no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom." Interestingly, the US decision is extremely similar to the Canadian Charter of Rights and Freedoms, which we're all familiar with.

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The proposed Ontario legislation wants to eliminate the "imminent danger" criteria from the Mental Health Act, based on the assumption that psychiatrists can somehow predict future dangerousness. This couldn't be further from the truth.

Whether the assessment of imminent danger is done by a police officer or a mental health worker, even the psychiatric profession admits that predicting dangerousness involves nothing more than a craps shoot. A brief filed by the American Psychiatric Association before the US Supreme Court stated that "such predictions are fundamentally of very low reliability." If, as the APA states, predictions of dangerousness are not reliable, this contradicts the whole basis for community treatment orders legislation, which is based on the premise that psychiatric patients must be forced to take medication or they will become violent.

According to a prominent US professor of psychology, Dr Margaret Hagen, who wrote the book *Whores of the Court*, the predictions of psychologists in court are wrong two thirds of the time, a statistic significantly worse than that of the general population.

In a case documented in 1977 by CCHR, a man in his late 40s was picked up by three members of an assertive

community treatment team from his home in Scarborough and taken to the psychiatric ward of a local general hospital. Without explaining anything to him—this is a mentally competent man—the man was forcibly injected with a mind-altering drug by a psychiatrist. Upon leaving the room he told the patient, "There's not a court in the world that can touch me."

It is important to note that these are not just isolated incidents being complained about by victims and advocates. Illegalities have been known to the authorities for years as being widespread.

A case in point: In 1997, the Provincial Auditor of Ontario exposed abuses at the Whitby Mental Health Centre. His report, submitted to the Ontario Legislature, stated:

"From a sample of patients considered capable of consenting to treatment, we found that: the assessment of mental capacity to consent to treatment was not documented in 76% of the clinical records we reviewed; informed consent was not documented in 88% of the cases we reviewed; 60% of the capable patients we interviewed stated that no one at the centre had explained the side effects of their medications before they were asked to take the medications, another 13% did not know whether they had received explanations, and 39% of the capable patients we interviewed did not know the medication they were taking and 41% did not know what would happen if they did not take their medication. Many of these patients stated that there would be no change if they stopped taking their medication." To date no one has been charged, although this violated the informed consent regulations.

According to the law, a patient must be informed about the nature of the treatment, expected benefits, risks, side effects, alternative courses of action and the consequences of not having the treatment. Yet this is violated as a matter of routine, in both the public and private mental health sectors and other areas, such as our schools.

**The Vice-Chair:** Excuse me. I see the light flashing. We will take a recess. The committee will continue after our vote.

*The committee recessed from 1754 to 1822.*

**The Vice-Chair:** Ladies and gentlemen, sorry for the interruption. You have five minutes remaining.

**Mr Dobson-Smith:** I have eight minutes, I think.

**The Vice-Chair:** I have you beginning at 5:40.

**Mr Dobson-Smith:** No, we started at 5:45, actually. The other fellow ran on. We have 20 minutes, I understand.

**The Vice-Chair:** Yes, you do. Continue.

**Mr Dobson-Smith:** Thank you.

I was explaining when we left off, just to refresh your memory, about the report of the Provincial Auditor of Ontario and giving you the various statistics. I basically said that there had been no informed consent in many circumstances at the Whitby Psychiatric Hospital, with 76% of the cases and 88% of the cases etc, and that these people did not understand their medications, whether



they should take them or not and what would happen if they didn't take them. To date, because there was no informed consent in this vast number of individuals, no charges have ever been laid; no one has ever been brought to say why this occurred.

According to the law, a patient must be informed about the nature of the treatment, expected benefits, risks, side effects, alternative courses of action and the consequences of not having the treatment. Yet this is violated as a matter of routine, in both the public and private mental health sectors and other areas, such as our schools.

Earlier this year, at a small school near Brantford, a couple was shocked to discover that their son had been sent for a psychological assessment without their knowledge. They discovered that the school had a policy to prevent disclosure to parents. The policy, known as "referral process," stated, "Do not get a signed consent form from parents."

In conclusion, every aspect of the community treatment order initiative will lead to abuse of patients and taxpayers. A real solution would include changing mental health laws to better protect patients. As an example, Ontario could implement videotaped consent procedures. This low-cost measure would ensure that patients are given proper informed consent in accordance with the law.

There should also be a written information sheet for every single psychiatric treatment and medication that will provide a standard minimum level of information to a patient in lay, understandable terms. This would protect every patient and it would also protect every practitioner.

Another valuable amendment would be mandatory medical testing to pre-screen for physical ailments, as it is known that many physical illnesses manifest symptoms that appear to be of the mind, yet they are of the body. This would help ensure that whatever condition the patient is suffering from would actually be addressed.

After all, if a psychiatrist does not diagnose without thorough testing, he or she cannot really be sure what is wrong, as without a full, searching, medical examination, a medical practitioner cannot establish the nature of the illness and thus provide a truly informed consent.

We firmly believe that a truly informed consent means the patient and/or his substitute decision-maker, his family member, fully understanding any medical condition that could be manifesting these things also, which is why a medical examination is necessary. Often, the patient is just looked at, and he's considered to have a bipolar disorder or whatever with just cursory observation.

In closing, I would like to say that if informed consent is not being applied in this province after more than two decades of it being written into law in the Mental Health Act, how can we ever expect psychiatrists not to abuse the vast powers granted to them with community treatment orders? Community treatment orders will do nothing more than legitimize the illegalities and abuses occurring in psychiatric facilities in Ontario every single day. Every single week we get calls.

**The Vice-Chair:** Thank you very much. We have about two minutes. Mr Clark, do you want to begin?

**Mr Clark:** I'll defer to Mr Patten.

**Mr Patten:** So I gather you support the legislation. No, I'm just kidding, obviously.

**Mr George Mentis:** We do support amendments to it.

**Mr Patten:** You do, OK. By the way, the Citizen's Commission; are you connected with the Church of Scientology?

**Mr Mentis:** Yes, we were established by the church in 1969.

**Mr Dobson-Smith:** We're currently separately incorporated.

**Mr Patten:** You're separately incorporated. Because this is twice; I had a group called this as well, but they didn't disclose that until they arrived in the office. Can I ask you—

**Mr Dobson-Smith:** Are you suggesting there's something improper about—

**Mr Patten:** No, not at all. I'm just saying, why is it that there isn't an upfrontness about saying that you are connected—

**Mr Dobson-Smith:** We're not connected.

**Mr Patten:** So you're no longer connected with them.

**Mr Mentis:** It's not that, sir. That's like someone coming up here and you asking them questions such as, what is their religion? I myself am a Scientologist; however, we are an independent body.

**Mr Patten:** No, I mean there are church councils who come; there are different groups. Anyway, I don't want to dwell on that.

You cited a lot of pieces of legislation, some I'm familiar with. I'd review that Bellevue piece of legislation as well, in saying that if indeed there was an analysis done by two completely different populations that showed that there was no distinguishable difference between the record of voluntary treatment and people who indeed were far more severely ill, I would arrive at a positive conclusion.

However, in your own particular minds, are there circumstances under which people who may be offered services, may have access to services, but in fact do not have the mental capacity at a particular time? Are there circumstances under which you would support involuntary treatment?

**Mr Mentis:** Yes, yes. There are clear circumstances where a person does need to be restrained. If a person is a danger to themselves or other people, obviously for the good of the person, his family and everybody around him, that person would need to be restrained. However, having said that, it's also very important to note that a very careful review of the past 400 cases of public violence—in each case, including the Taber shooting, the Columbine school shooting etc, psychiatric treatment preceded the crime. That was the only common denominator in every single instance. So although, yes, I will say that someone has to be restrained, other than the period of danger, once the danger subsides we should go into a



regimen of standard medical treatment. Otherwise you're feeding the same thing.

Some of these drugs, as has been exposed in the media—for example, some people brought up this North Carolina study. If one examines what has gone on in North Carolina just in the past 12 months, as has been exposed on 60 Minutes, you'll find that a lot of the patients in these psychiatric facilities are horrendously abused.

A case in point is Charter Medical Corp, which was the largest provider of mental health services in the entire country, where you had in one facility alone 24 deaths which were as a result of restraint. In case after case in the medical records it would say "death due to asphyxiation." However, what would actually happen in a lot of the cases is that the person, the kid, the adolescent, whatever, would be on a psychiatric drug, they would be normally overdosed, and then when a physical restraint would occur, what normally would not kill that person, in this particular case would. As a result, as I speak, the US government is now reviewing restraints in facilities across the country.

**The Vice-Chair:** Thank you both for coming here today. We appreciate your comments.

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#### DON BARBER

**The Vice-Chair:** Our last presenter is Don Barber. Welcome, Mr Barber. You have 10 minutes in which to make your presentation.

**Mr Don Barber:** In expressing my concerns about Bill 68, I would like to address the issue from two points of view: the general negative trends in our society and my personal life. I am among the many who believe this bill will lay the foundation for Canadians to be wrongfully arrested more often.

In 1994, I started for the first time to become involved in government as a community representative and to try and save a local, old-growth urban forest, the Cawthra Bush in Mississauga. My main focus and efforts were more on human and democratic rights than environmental and to get the facts to the public and then to try to get the right for the community to make an informed decision by way of vote. Over the years, I came to a new understanding about how Canadian law was enforced regarding human and democratic rights. Unlike many apathetic Canadians, I came to see that our country was not so great that politicians couldn't ruin it, if we let them.

Some of the first-hand examples provided are while dealing with Hazel McCallion, a politician who doesn't care how she wins, just as long as she wins, and should be used by this committee while reviewing the possible negative side effects of Bill 68. Many abuses of this bill will be by the government, but members of the public, bullies generally speaking, will also find uses for this bill which are not the intentions of lawmakers.

First of all, what has been lost by governments of the day? That is, what is a human being and what does the human animal need for a quality life? This is the most basic question that is not asked. There's no single body of work the government can point to and say, "That is our best understanding of our kind and its needs." Why should it exist? Because to make quality decisions in government you need to know who you are making them for and what people really need.

The mentally challenged belong in our society, just as much as the elderly do. They are a part of the world we are created to live in, and it is dehumanizing for all of us to try and purge the streets of their existence. Governments have often made hard decisions regarding what people want and what is best. The wisdom of the ages has guided many. It is better to err on the side of caution and often the truth is the exact opposite of the popular perception.

In the case of human beings, the best overall statement to make is our lives should be as close to the balance between chaos and order as reasonably possible. Too much of either can destroy not only the individual life but whole societies as well. To say to a government that too much order can destroy the quality of a person's life, their culture, society, if not the very country they live in, is a hard sell.

Another important element in good government decisions should be made understanding there are acceptable losses in our society, or how many people are we willing to lose before action is taken? To put that another way, if you try and save everyone, you have to try to control everyone. Over-control leads to its own losses. Human and democratic rights come at the cost of human lives. We should try not to be motivated by do-gooders who overreact to events, start up a media-driven bandwagon to influence our emotions and ignore the intellect. The role of good government is to be far-sighted and to understand that the loss of a few should not be used as a power grab in our lives while grandstanding for votes.

Once laws are passed, they have a habit of growing, linking with other laws and legal precedents to become even more intrusive. With the whole body of human history to review, let us look at a good example of how some of these principles have been applied in other governments, some that they thought were too big to fall as a result of them, such as the USSR, a country that thought ruling from the centre would be the best way to do things, with a grand list of laws enforced by unaccountable bureaucrats. The USSR did label those who disagreed as mentally ill in many cases, and there is reason to believe the same would happen in Canada. The use of this bill begins the same process. Under the guise of doing good, a political weapon is created against the most important group to a dynamic society, and those who would oppose are threatened.

Good government depends on accountability. The current government has downsized that factor and removed it in the case of the police complaints process. The possibility of taking a police officer to court has been removed



and a tribunal of persons the government selects, some of whom have made large donations to the current government, replaces trained legal professionals. In general, bureaucrats are very unaccountable and the police are little more than gun-carrying bureaucrats.

Members of the public have often been bullied by the government because they are poor or lack the knowledge to stand up for their rights. Added to this, the poor can't fight back, a fact known by the poor and recently reported by the National Council of Welfare. Our legal system discriminates against the poor from start to finish. This is the most important point, as many would boast that there are laws to protect Canadians' rights. The truth is they have to be bought. You have to buy justice in Canada. If you can't afford lawyers to fight back, our lives are just flushed.

The bill is about making the public more accountable to doctors and police, but nowhere does it try to make doctors and police more accountable to the public. There's no effort for a balance here. With the creation of newly privatized or privately run facilities like prisons, it would appear the government wants to fill them at our expense.

One of the key elements for accountability in regard to police, doctors and bureaucrats is that they make interpretations regarding events and then force them on members of the public. The only way it can be challenged is in court. If there is no money, it can't be challenged. The bureaucratic mindset is one that builds like records and reports on top of existing ones. Rarely does a bureaucrat stand out from the crowd by saying records in the past are wrong and should not apply. Often wrong interpretations are made because it is known the person can't afford court or any legal method to fight back. Nowhere does this government address this fundamental failure of our legal system. Instead, it passes new laws that only the well-off can afford to avoid—the old idea of a class system.

To use events in my life, I hope to show how dangerous it is to be poor and how unaccountable and unjust government can be towards a stand-up kind of person, as well as the politically active. When I tried to use the freedom of information act to get city of Mississauga records for the public's use, the mayor personally stepped in and shut down the act. I was poor and could do nothing. In time, they accused me of being a frivolous and vexatious abuser of the freedom of information act. In the

inquiry that followed, the Canadian Environmental Law Association bent their own rules to make a submission, as it recognized the importance of the issue I was appealing, but a bureaucrat knowingly made a wrong decision, knowing I couldn't appeal. This injustice will stand until I can find thousands of dollars to fight it.

The next point is one of the most important ones that I've been trying to make. Next, city politicians sent the police to my door because they didn't like my demeanour—nothing else. Not only was it direct harassment against me, but the same politicians who enlisted the police made a point of telling the public the police had been sent to my door in an effort to publicly discredit me. Again, I am poor with no chance to fight back. This is the way of the future: politicians abusing the law and their power, knowing the public can't fight back.

As I have made a point of not backing down, even when the police are present, when it comes to standing up for my rights—and it is based on what I have read in their notes about the event and whatnot and what they had said at the time—it is very clear to me that if this bill had been in place they would have arrested me for a bad attitude towards politicians.

Another example is the matter of a sadistic bully who uses the law as a weapon against me. This person—

**The Vice-Chair:** Mr Barber, I just want to inform you that you have about 30 seconds left in your 10 minutes.

**Mr Barber:** OK. Thirty seconds? Can't get two minutes or anything?

**The Vice-Chair:** No, sorry. If you'd just give us a few final comments.

**Mr Barber:** Basically, the idea is that bullies use the law as a weapon against you. The police are then faced with individuals who are consummate liars and manipulators and you actually have to prove your innocence.

I'll have to submit the rest in writing. Generally speaking, this law opens up the opportunity for a great many more people who are not the target of the bill to become vulnerable just simply because there are more laws for people to be arrested. I'm very concerned that if politicians can send the police to your door because they don't like your attitude, this bill will be simply extended to arresting people whose attitude they don't like.

**The Vice-Chair:** Thank you for coming here to our committee. We stand adjourned.

*The committee adjourned at 1842.*







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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 31 May 2000

# Journal des débats (Hansard)

Mercredi 31 mai 2000

**Standing committee on  
general government**

Brian's Law (Mental Health  
Legislative Reform), 2000

**Comité permanent des  
affaires gouvernementales**

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale

Chair: Steve Gilchrist  
Clerk: Viktor Kaczkowski

Président : Steve Gilchrist  
Greffier : Viktor Kaczkowski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 31 May 2000

Mercredi 31 mai 2000

*The committee met at 1547 in committee room 1.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the committee to order on this, the final day of hearings for Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996. I should say it's the last day of hearings after first reading. After these hearings conclude, we are going to refer the bill back to the Legislature, where it will have further debate and an opportunity for the amendments that have been developed so far as a result of the presentations that have been made to us to be debated, and then to go back to committee to actually be voted on. The representatives of all three parties have been actively developing those amendments and trying to find areas of common interest, and I congratulate you on your efforts to date and encourage you to keep doing more so.

## ONTARIO REVIEW BOARD

**The Chair:** Our first presentation today will be Dr Richard Schneider. Let me just allow the doctor to get seated. Dr Schneider, we have 15 minutes for your presentation, and we appreciate your coming forward.

**Mr Peter Kormos (Niagara Centre):** I just want to explain briefly that Ms Lankin, who as you know has been with this committee since it began considering this proposed bill, was called away abruptly on an urgent matter. She regrets that and has asked me to apologize. She has asked me to sit in and monitor the matters this afternoon, and I appreciate the committee's indulgence in that respect.

**The Chair:** Thank you, Mr Kormos. You're certainly welcome at the proceedings here today.

Dr Schneider, it's up to you to take the whole time for a presentation or leave time for questions if you see fit.

**Dr Richard Schneider:** I was told that I had seven and a half minutes to speak and seven and a half minutes for questions, so I've arranged things according to those instructions.

I'll keep my comments very broad and very general with respect to the proposed legislation and how it affects the Ontario Review Board.

First of all, with respect to background, the Ontario Review Board is an adjudicative tribunal established pursuant to the provisions of the Criminal Code of Canada. Every province and every territory must, by the Criminal Code, have a board like the Ontario Review Board.

We are, from an historical perspective, the new incarnation of the Lieutenant Governor's Board of Review, and we have jurisdiction over all mentally disordered accused from the criminal justice system; that is, those accused who have been found on account of mental disorder to be either unfit to stand trial, that is, incapable or incompetent to stand trial, and those who have been, as a final verdict, determined to be not criminally responsible on account of mental disorder. The old terminology was, "not guilty by reason of insanity."

At present the Ontario Review Board holds in excess of 1,200 hearings a year throughout the province in respect of close to 1,000 mentally disordered accused. In the past 10 years our numbers have been increasing by an alarming minimum of 10% per year. This is juxtaposed to, over the same period of time, the number of criminal prosecutions actually decreasing. A large proportion of this increased volume is made up of accused who have committed relatively minor offences. Most of these people, from our perspective, are best thought of as having primarily mental health problems rather than criminal proclivities. Most have extensive psychiatric histories by the time they come to the Ontario Review Board.

Boiling that all down, what you might say is that we as a society have been, in other words, criminalizing the mentally ill. The review board believes that mental illness should be treated civilly and by mental health care facilities rather than criminally and by jails and the likes of the ORB. We are not looking for more business.

The ORB applauds Bill 68 in that it is seen as an improvement to the mental health legislation. The



changes will make the legislation more effective and more flexible. It is anticipated that fewer mentally disordered accused will end up leaking out of the civil system and into the criminal courts as a result of this more comprehensive legislation. Apprehension can now be based upon reasonable and probable grounds rather than observation. That had been a primary stumbling block with present legislation in that unless a police officer had actually observed the mentally disordered person behaving in a way that was disorderly, apprehension could not be made and as a result the police would resort to the less desirable option of arresting the individual and charging them often with a very minor criminal offence, bringing them through the gates of the criminal justice system and potentially into the jurisdiction of the Ontario Review Board.

With respect to community treatment orders, we believe community treatment orders will simply add another tool to the clinician's array of treatment options. They will allow for the treatment of an individual in the community who would otherwise require hospitalization. From our perspective, CTOs should be embraced by civil libertarians, not rejected. The CTOs should be available, from our perspective, as well to first-time customers.

Once in the criminal justice system, it is expected that community treatment orders will allow more of our accused to be placed into the community rather than detained in valuable forensic hospital beds. Once an accused is subject to our jurisdiction, we have an option to discharge an accused subject to conditions from hospital or detain them in the custody of a hospital. With the availability of a complementary CTO regime, it's anticipated that more of the people who are presently occupying hospital beds could be placed into and monitored in the community.

Very briefly and very generally, those are the submissions of the Ontario Review Board with respect to the proposed legislation.

**The Chair:** Thank you very much. Our leadoff question will come from the Liberals.

**Mr Richard Patten (Ottawa Centre):** Thank you, Dr Schneider, for being here today. My question has two parts to it. First, given that you are suggesting that the greatest increase in the volume is made up with—you used the term—minor offences, I wonder if there is a solution that you might have to propose. Second, given that this bill primarily deals with a new mechanism called a CTO or a CTA, whatever you want to call it, and there is a role for the board in that which may add additional pressure to what you are saying is a fairly heavy workload, what is your response to that in terms of the role, and as you read the legislation, what is the reception of the pressures that that will add to your workload?

**Dr Schneider:** If you could take me back to the first question, I'm sorry.

**Mr Patten:** The first question was, is there a way of dealing with the minor offences? That seems to be where the increase is.

**Dr Schneider:** This problem is being attacked on a number of fronts. The primary example that has been put

into place in the last few years is the diversion program, which is part of the crown policy manual on the Attorney General's side of things. That's an attempt to divert out of the criminal justice system at first instance accused who have been charged with relatively minor offences. While that is obviously helpful, there are still a large number of people coming into the Ontario Review Board system having been found unfit to stand trial or not criminally responsible in respect of relatively minor matters. We don't see that the CTO legislation will add anything to the business of the Ontario Review Board. What one might expect is that it could add business to the Consent and Capacity Board on the civil side, which would assume carriage of this legislation if it were to be proclaimed.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** One of our concerns around the committee table has been the extent to which we criminalize the mentally ill because we just don't have appropriate treatment resources for them, either in the community or in terms of beds so they could be admitted to a facility if that's needed. So we would share your hope that this is going to make a difference in terms of getting appropriate treatment for those whose primary problem is mental illness.

The community treatment order is new ground for us. One of the things we're struggling with a little bit is the population we can reach and be most helpful to with community treatment orders. There is a very significant onus of responsibility on the physician who signs a community treatment order to ensure that the appropriate treatments are in place. My question for you would be, given the experience you have on the Ontario Review Board, would you have any concerns that there could be inappropriate use made of community treatment orders in the sense of even having people who were not amenable to this kind of community treatment and who could potentially be dangerous having this offered to them as an alternative to being in a psychiatric facility?

**Dr Schneider:** I guess what you're asking is two things. One, would the implementation or the proclamation of the CTO provisions somehow expand the sorts of people who would be gathered up under the legislation? With respect to that aspect of your question, I don't think so. The certification criteria will remain static. From our perspective, this simply equips the physician with another tool with which he might respond to the same problem that under the present regime he would really have to hospitalize.

The second part of your question I take to be, would the CTO scheme invite physicians to put into the community people who really should be in hospital? Again, I really can't speak to that too well other than to assume that the physicians who are going to be using this legislation will be approaching it in a bona fide way. I wouldn't like to think that's a possibility, but I understand why you would ask it.

**Mr Kormos:** The Ontario Review Board operates under the auspices—I appreciate the jurisdiction is from the code—of the Ministry of Health?



**Dr Schneider:** That's right. In other words, the board, within each province and territory, has to be provincially funded. In Ontario, it's funded by the Ministry of Health; in other jurisdictions, it's the Ministry of the Attorney General. I can't think of whether there's another ministry that might have picked it up in other jurisdictions, but that varies from province to province. It is a Ministry of Health tribunal.

**Mr Kormos:** Is it fair to call it a quasi-judicial function?

**Dr Schneider:** Yes.

**Mr Kormos:** I don't quarrel with your right to be here, but how is it that the review board, funded by the Ministry of Health, with its jurisdiction coming from the Criminal Code, performing a quasi-judicial function, how is it that you're here—and again, I'm not disputing your right to be here—speaking for the Ontario Review Board with respect to clearly a legislative endeavour and a new policy direction? How did that come about?

**Dr Schneider:** The Ontario Review Board sees, as a major contributor to its increased volume, leakage out of the civil mental health system. The proposed changes to the legislation are viewed by the review board as measures that will tighten the net or make the legislation more effective so that people will be dealt with as they should be on the civil side of things by mental health facilities and there is less chance that they will end up, through misadventure or whatever, getting caught up in the criminal justice system. So our interest is that this is legislation that could hopefully reduce our numbers.

1600

**Mr Kormos:** Fair enough. You're speaking for the collective now, is that correct?

**Dr Schneider:** The collective?

**Mr Kormos:** Well, the review board.

**Dr Schneider:** I'm speaking actually technically, I suppose, for myself and the chair of the Ontario Review Board. The review board itself, besides the administrative offices, is a bunch of psychiatrists, lawyers and retired judges who contribute time on a part-time basis.

**Mr Kormos:** Again, I'm not being argumentative, I just want to make that clear. So you're here on behalf of yourself and the—

**Dr Schneider:** The chairman of the Ontario Review Board.

**Mr Kormos:** So the various people who sit on these adjudicative panels weren't party to this proposal?

**Dr Schneider:** They haven't been formally canvassed, no, although I can tell you that if they were to be polled, their sympathies would be very much in accord with what I'm relating today.

**Mr Kormos:** I suppose maybe they should have been polled.

**Dr Schneider:** Perhaps.

**Mr Kormos:** Thank you very much. I appreciate your time.

**Mrs Julia Munro (York North):** Thank you very much, Dr Schneider, for coming here today. I want to follow up on one of the comments you made towards the

end of your presentation where you referred to the community treatment orders as simply another tool. I'd like to focus on that, because many of the people who have made presentations to us have indicated a concern about the potential power of that tool. Given the experience you have in sitting on the review board, it seemed to me that you might be able to offer us some kind of comment or suggestion with regard to allaying those fears.

**Dr Schneider:** I understand the other perspective. I've heard it, of course, many times before and I understand it. It's just that I think in order to have those fears, you have to ascribe quite malevolent intentions to the people managing this legislation. The certification criteria will remain static whether you're in hospital or out of hospital. The question is, can a person be managed on an out-of-hospital basis? From that perspective, it seems to me to be a vehicle to take an individual who under the present scheme would have to be hospitalized and allow that individual to be treated in the community. So from a disturbance perspective, it's the least intrusive method of accomplishing the objectives of the legislation.

**The Chair:** Thank you, Dr Schneider. We appreciate your bringing the unique perspective of the review board before us here today.

## ONTARIO HOSPITAL ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Hospital Association. Would the representatives come forward. Good afternoon and welcome to the committee. We have 20 minutes for your presentation. It's up to you to divide that and allow time for questions and answers if you see fit.

**Mr Bob Muir:** Good afternoon. My name is Bob Muir, and I'm the Ontario Hospital Association vice-president and chief operating officer. With me today is Rita Notarandrea, who is the assistant executive director of the Royal Ottawa Hospital in Ottawa, and Jean Trimnell, who is a consultant who works with us and a member of our mental health working group. I'll just say a few things and then answer questions if there are any.

The OHA, which represents the province's hospitals and actually has as members all of the psychiatric hospitals, even though they are still provincial, has prepared a written submission based on the expertise of Rita and other members of our mental health working group. That document has been provided to the members of this committee, along with my remarks. My comments will be brief because there may be other technical issues in the document, if you read through it quickly, which you may want to ask us about.

We understand that the intent of this bill is certainly to enhance the protection under law for people with serious mental illness, as well as for the protection of the public.

The OHA believes that broadening the criteria for detaining and assessing individuals who appear to be at risk of harming themselves or others and broadening the criteria for involuntary committal will facilitate earlier



intervention and, we believe, better outcomes for individuals with a history of severe mental illness.

We also believe that the bill, of course, introduces community treatment orders to Ontario's mental health system so that individuals can receive treatment in the least restrictive setting. We believe that CTOs are intended primarily for use with a small, well-defined population. Severe mental illness affects about 75,000 people in this province, about three quarters of 1% of the residents. Much of Bill 68 is geared to meeting the needs of this population, and OHA supports that goal. However, at the same time, in no way should this be construed as any endorsement—obviously, it wouldn't be—of some broad instrument of social control.

OHA is broadly supportive of this legislation. It is always difficult, we understand, to balance individual and collective rights. We've been at this for some time now, even before the charter. I can remember when I was in Manitoba, almost 30 years ago now, the legislation we introduced that dealt with the delicate balance between collective and individual rights and the whole issue of what constituted an imminent danger. Thirty years later we're still dealing with this, and maybe 30 years from now we'll still be dealing with it, but we have to make some progress.

The bill itself endeavours to ensure that a person with serious mental illness receives psychiatric treatment in a less restrictive setting than a psychiatric hospital or a schedule 1 service of a public hospital when practical, and we support this intent.

The implementation and application of legislation is obviously spelled out in regulations, and this won't be any exception, so we want to participate in the development of those regulations. However, there are some elements which I want to talk about that should be enshrined in the actual law itself. This, for us, is particularly important.

The issue of accountability for individuals who come under the jurisdiction of CTOs is paramount to the effectiveness, we believe, of this legislation. CTOs, as you know, can be initiated either by physicians in the community or in the hospital. When initiated from the hospital setting, the current wording of Bill 68 is ambiguous as to whether a person under a CTO is technically a hospital patient or not, and in our view this point should be clarified before third reading. It may be that the answer to this question varies according to the concept of the "most responsible agency," a concept similar to that of the "most responsible physician."

It is unclear whether a person under a CTO should be considered a hospital outpatient or a consumer obtaining services in the community. The answers to these questions will vary, but in the hospital context there are serious implications for us in terms of liability, confidentiality of patient records, and other issues.

Bill 68 does not delineate a clear process for moving a person who is assessed in a hospital to receiving treatment in the community under a CTO. Such a process should be clarified before the bill becomes law. There-

fore, the most important issue from a hospital perspective is the relationship of a person getting treatment under a CTO to the hospital. This is important for a variety of reasons, including establishing responsibility and accountability for the vulnerable populations with serious mental illness.

Most of my comments from now on will be fairly technical and dealing with specific sections and clauses of the bill.

We would like to see the definition of "mental disorder" refined, and we discuss that in our presentation.

We see a greater demand for the services of rights advisers under the proposed amendments, and a new role for them in the community as opposed to strictly in institutional settings. We stress that rights advisers must be given adequate resources to meet the challenges they will face with this population.

We would also like to see evidence used as criteria in the decision-making process related to assessment and involuntary admission. We believe the criteria for CTOs should explicitly include previous non-compliance with treatment regimes.

We would like clarification of when it is appropriate to use institutional leaves of absence, which are available under current legislation, as opposed to CTOs, which are introduced through this legislation.

Details of this discussion are available in our written submission.

In conclusion, Bill 68 appears to offer certainly the potential for earlier intervention and treatment of people with serious mental illness. While we support this direction, we caution that there are details which must be, as I'm sure you know from other presentations, resolved before the legislation is practical.

1610

I have not raised the fundamental issue for hospitals, which I think goes without saying, that none of this should be introduced without some base understanding of the financial condition of hospitals and their capacity to deal with the impact. This isn't to say that it has to be exact, but hospitals in this province are dealing with a whole range of issues these days and I think we have to ensure, not only for hospitals but for the rest of the system, that the resources will be there to make sure the legislation can truly be effective.

We look forward to dealing with the rest of the legislation and advising on regulations. Thank you.

**The Chair:** Thank you very much. You've allowed us about four minutes per caucus for questioning. This time, we'll start off with Mr Kormos.

**Mr Kormos:** Thank you very much. I read the OHA written submission, which I trust is joining with you. I'm interested in the aspect of rights adviser. We used to have an advocacy office in the province of Ontario, until around five years ago, that advocated for people who were being confronted by institutions. You talk about that as an important element, the rights adviser. Are you also saying that there should be access to a rights adviser at



the very outset, for instance on apprehension by a police officer?

**Ms Rita Notarandrea:** Two issues related to that. First of all, I think you're referring to the Advocacy Office, the PPAO system, which is still in place and primarily associated with the PPHs. Other hospitals with psychiatric services also have rights advisers, which means that when people do come in on involuntary committal, a rights adviser goes to them and tells them what their rights are. Therefore, they could be seen by a review board if they disagree with the committal. So that exists already. Both of those are associated with hospitals. Community treatment orders are for people who are in the community, and therefore what we're suggesting is that rights advisers should also be available to those in the community, not just to those in hospitals.

**Mr Kormos:** I'm trying to identify with this. I'm thinking about being picked up by a police officer and taken to a hospital because the police officer uses "reasonable and probable grounds." Wouldn't you extend my right to an advocate to that stage of the process as well?

**Ms Notarandrea:** Are you saying, should we not be recommending that, or is that what currently exists? Right now, what exists in terms of rights advice under this legislation is only if you do not consent to treatment and if there is an involuntary committal.

**Mr Kormos:** But you're talking about merely an adviser as compared to an advocate?

**Ms Jean Trimmell:** The other thing to add is that this legislation directs that people who are going to be put on a community treatment order would have access to rights advice and there's the situation where that could be occurring in the community. Currently, there are not rights advisers in the community setting. We were just highlighting the point that that would need to be well resourced, that we couldn't be looking to the existing system to take on this additional expectation. But we support the intent that people would have access to rights advice.

**Mr Kormos:** I'm coming from the perspective—the last submission was the reference to being picked up by the police and being thrown into the criminal justice system. But at least there I have a right to a lawyer—do you know what I mean?—who can advocate for me from minute one, from the minute I'm apprehended. I'm concerned—and maybe I'm dead wrong; tell me—that here there's a rights adviser but if I don't have somebody to advocate for me, those rights are unenforceable. It's rights without a remedy. That's my problem.

**Mr Muir:** Aside from that issue, I think all we're saying is that those people who are in the community under some sort of treatment order have all the rights and privileges that patients do when they are detained involuntarily in a hospital.

The other issue is with respect to whether individuals have rights advisers at the point at which they're detained by police. They don't now; they're simply detained.

That's a separate issue and I guess it's debatable, but probably impractical.

**Mr Kormos:** Thank you, folks.

**Mrs Munro:** Thank you very much for coming here today. I want to ask you about a suggestion you make on page 8, where you ask that you'd like to see the definition of "mental disorder" refined. Perhaps it's in the package you've provided for us, the specifics?

**Mr Muir:** There's a section in the package that deals with exclusions and so on.

**Ms Notarandrea:** There's a section in the package on page 2 that elaborates on exactly what we're suggesting for that. It says, "any disease or disability of the mind," which is what you have, and then we elaborate, "that results in ..." and we describe the type of patient this Mental Health Act is referring to and therefore excludes others; for example, those suffering from Alzheimer's and acquired brain injury with no behavioural issues being displayed. We were trying to refine this Mental Health Act and what population it refers to.

**Mrs Munro:** If I could squeeze in another one, because you raised acquired brain injury, we heard the argument earlier in our public hearings that leaving that group out created some problems. I wonder if you could comment on that for us.

**Ms Notarandrea:** My understanding when they presented was that they said they are acquired brain injury and they certainly wouldn't expect every single brain-injured client to be represented by this act but those clients who are presenting with serious behavioural issues. We're not excluding that population; we just didn't want to be over-inclusive in terms of the Mental Health Act.

**Mrs Munro:** I certainly appreciate that, because from my point of view as a member of this committee, that has been an area of concern, that it be the right group of people, obviously. I was particularly caught by the fact that that group came and talked about problems they had experienced within their community, so I appreciate your comments on that issue.

**Mrs McLeod:** I have two very different questions, and I'll just place them and ask you to respond. The first is one that Mr Muir began to allude to at the end of his remarks, and that's the facilities in hospitals, the adequacy of resources in hospitals. The OMA expressed the hope when they were here that the CTOs would reduce the need for mental health beds in hospitals. The community psychiatrists were very concerned that this legislation may increase the demand on community hospitals for psychiatric beds, and said they couldn't meet the need now.

I guess my extended concern then is that after six of nine psychiatric hospitals are closed, the only beds for people who are acutely psychotic and have to be admitted will be in community hospitals where there isn't a psychiatric facility remaining, because there are forensic beds, there are psychogeriatric beds and then there are the beds in community hospitals. One of the concerns we've heard is that if you're in an acute psychotic state and have to be



admitted or readmitted, it could typically be for as long as three to five months. My concern is, is that even an appropriate place for that individual to be? That's one question.

The second is more technical and it's the fact that on page 3 of your package you've raised concern about the need for reissuing a CTO or issuing a CTO, that the individual should have shown evidence of non-compliance with prescribed treatment. I guess I thought that was inherent in the criteria for the CTOs, and I'm wondering who you felt might be inappropriately given a community treatment order without that further clarification.

**Mr Muir:** Maybe I can answer the first question, and that is to say that not all psychiatric hospitals in the province—I'm sure you know this—are being closed. There will be Whitby and a number of them that will remain open. Aside from that, we're in negotiations right now. We have a provincial table between the government and ourselves in seven receiving hospitals that will receive the patients from all of the psychiatric hospitals that are closing.

We have not settled on the number of beds, but I can tell you that if we follow the commission's directions we will reduce beds, and that is an issue of some debate right now. So the issue of the sizing of the system hasn't been completed, and the transfer of beds from the receiving hospitals, which are the new psychiatric hospitals with a higher level of psychiatric facility, to schedule 1 services hasn't been worked out at all.

I'm not criticizing; I'm just saying we're going through an extremely complex process that other provinces have taken years to do, and we're trying to do it in a very short time period and we haven't figured it out yet. That's the system within which we're putting these other pieces. So the answer to your question, I think the honest one, is we don't know. If anybody says they know, they don't know, because the fact is that we have the system in some flux at the moment.

1620

**Mrs McLeod:** I guess my plea is that it's not just a sizing issue, it's an appropriateness issue; in the north-west, for example, where there will be no facilities.

**Mr Muir:** Absolutely. With or without CTOs, mental health beds in the province are under huge pressure because in many cases hospitals are balancing their budgets and beds are being reduced. We don't encourage that but that is a fact, and we have to be cognizant of what's happening in mental health. To give the government credit, they have been putting more money into the system, but it is a system that at the moment is pretty fragile and under a huge amount of change. I guess that's really all I can say, because that's the type of system within which we are introducing these changes. I'm not saying you shouldn't introduce them, but you have to be very careful that you understand that and, secondly, that you resource it appropriately to meet your objectives.

**Ms Notarandrea:** It's also a system that's very much dependent on the increases in community services. As those PPHs are closing, there is, you may have heard, a

comprehensive assessment project that occurs and that assesses all the patients within those PPHs and makes recommendations as to what the services ought to be in the community before any of those beds are closed. So the assumption within the system is that those community services will be put in place before the PPH is closed.

**Ms Trimmell:** Perhaps I will answer your last question. I agree. I think it's implicit that the group that is being targeted is likely those persons with serious mental illness with a history who have not complied with their medication. We felt it might be helpful to simply make that explicit in the legislation, because otherwise it's just implicit, it's not up there front and centre. That would also maybe assist with some of the concern around ensuring that the targeted population is quite narrowly defined.

**The Chair:** Thank you very much for taking the time to come and join us and making your presentation. We appreciate it very much.

#### PENETANGUISHENE MENTAL HEALTH CENTRE

**The Chair:** The next presentation will be from the Penetanguishene Mental Health Centre, Dr Fleming. Good afternoon and welcome to the committee. We have 20 minutes for your presentation, sir.

**Dr Russel Fleming:** Good afternoon. It's particularly helpful to be invited here on a day when the Blue Jays are in town for an evening game.

I have two documents that I think you have. One is more or less an outline of what I'm going to say. The second one is a copy of a publication from the American Journal of Psychiatry of December 1999 which pertains directly to research in relation to the benefits of community treatment orders and what makes them work and not work. I'll get to that shortly.

I'm a psychiatrist and I will be one of the clinicians attempting to make use of this new tool if it comes to pass. I hadn't thought of it as a tool exactly, but I suppose it is in a sense. I'm also one of the clinicians who looks after some of the people subject to Criminal Code disposition orders that Richard Schneider was referring to a few minutes ago. So I have a sense of how both parts of this system work, or perhaps in some ways, as he was suggesting, don't work too well at the moment.

There seem to me to be two major aspects to this proposed legislation. The community treatment orders seem to be getting the most attention, but I think the expansion of the civil commitment criteria is equally important, perhaps even more important, although it may be overshadowed by the community treatment order discussion. I don't intend to say much about the civil commitment issue. I happen to be entirely in agreement and supportive of that part.

My initial reaction to the community treatment orders, however, was that it's quite complicated and I wonder what will actually motivate clinicians to attempt to make



use of it, particularly if it appears to require additional effort to organize and carry out. There will of course be additional hearings before the Consent and Capacity Board, in addition to those that we all attend virtually every week.

On closer examination, though, I think the legislation is well thought out to fit in with our historic approach to mental health legislation in this province, and I think it could work for certain kinds of clients in certain circumstances, which I'll speak to in a minute.

I was a little distressed when I first read this thing, as I've described in the next paragraph, on page 2. I read the criteria where it said you have to have three admissions in two years. Well, I've got a short list of people who have been continuously hospitalized for more than three years, and some of them considerably longer, and my first reading of that was that, by a quirk of wording, my list of guys wouldn't have an opportunity to take advantage of this. But then I read it again, and I think it's disjunctive. I think there's an "or" in there which separates off the two admissions from the other part. Anyway, lawyers have a way with words that sometimes confuses those of us who look at the world from other perspectives.

Turning now to more important things, in reference to this paper of the American Journal of Psychiatry: This publication reports on a study in which involuntarily hospitalized patients were assigned randomly to two groups and were treated on an in-patient basis, one group simply discharged in the normal way and the other group subjected, I guess you'd say, to the community treatment order provisions. The results were that to be clearly effective, the outpatient commitment had to be sustained beyond the original time limit. It has to go on for a while, I think is the message; six months to a year is not unreasonable to think of, just as a starting point. However, it did result in fewer readmissions, by a fairly substantial margin, and fewer hospital days, particularly for people who have what they refer to as "non-affective psychiatric disorders," and I think what they mean by that is largely people with a diagnosis of schizophrenia.

More importantly, and I put this in bold type because I think this is one of the main issues here, their other conclusion was "that sustained outpatient commitment reduced hospital admission only when combined with a higher intensity of outpatient treatment."

That shouldn't be a surprise, I suppose, in a way, but it does beg the question of whether the orders themselves were the issue, whether they actually made the difference, or whether it was simply due to the additional effort and attention that the order mandated or brought about; and then a new question, whether we could achieve basically the same thing if we just upped the level of appropriate support and attention that we provide to people in the community.

As an aside, those people Mr Schneider was referring to, who are held under Criminal Code disposition orders, when they make it to the community, they do receive that additional level of support and extra treatment because it

is mandated in terms of a disposition order. They, for the most part, do passingly well, even though they have, in large part, exactly the same kinds of disorders and problems that the other group, who have never found their way into that system, have as well.

I think all of that remains to be seen. However, the importance of the resource issue, in order to even give this a try, is crucial. In our own situation, and this may or may not be typical across the province, some of our in-patient programs at the moment, particularly acute care where most of these people would be or pass through, and forensic care have been occupied at above 100% capacity now—particularly in the case of the forensic service, for more than two years we have not been below 100% capacity in that program. Well, how do we do that? We add one more and then another one and then another one, and we add nursing staff, if we can find them, as needed. We survive with 23 and sometimes 24 patients in a 20-bed unit.

In our outpatient service, our case managers in that program have individual caseloads above 30 clients at the moment, when around 20 as a maximum is thought to be a reasonable caseload.

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This isn't meant to be a whine for resources, but I'm wondering, in terms of the community treatment orders, who is going to have the time and energy to undertake the organization of community treatment orders, and who is going to provide the higher intensity of treatment involvement that the research paper I am quoting from says is going to be necessary for it to make any difference? On the other hand, if community treatment orders fail in individual cases—and they may; they don't necessarily always succeed—if readmission is required, how will that be accomplished in in-patient programs that are already chronically full? Based on what we know so far, I don't think community treatment orders will suddenly produce an emptying of in-patient beds. They may, in time, produce some softening of the situation, because our readmission rate should go down in the first year or two once we undertake this process, but there will be that kind of time lag, at a minimum, before we begin to realize that benefit.

Since I had the opportunity to come here, I have a couple of other suggestions about how we might save some time. Some of the clinicians, when they knew I was coming here, made sure I mentioned this one, and this is in regard to the use of form 1s by some of our sister facilities, particularly non-schedule general hospitals. They tend to see that word "forthwith" in the legislation, in clause 15(5)(a), as a licence to send people in 20 minutes over to our doorstep, no matter what their condition, whether we have a bed or not. It's convenient for them to take the position that they have no other choice legally but to do that.

It would be helpful to us, when our acute care unit is already three over count on a Saturday night or a Sunday morning, if the law allowed a little bit more specifically for some degree of negotiation, maybe by taking out the



word “forthwith” and stipulating that a short period of detention in the referring facility is reasonable and legal while arrangements for the transfer are actually negotiated. The current law in fact does say that an application has a life of seven days from the day it is signed, but when convenient, people in the general hospitals who are sending people to us look right by that phrase to the word “forthwith” and the ambulance is on the way.

The second suggestion I have, for what it’s worth, pertains to the duration of form 4s under the Mental Health Act. At an earlier time in history, form 4s could actually cover a period of time of up to six months, and then up to a year, for people who were obviously going to be in hospital for quite a long stretch. I think that was a result of changes back in the 1970s and 1980s, but I wonder if it’s time to recognize what an enormous waste of resource this is for us. I think the current record holder at our hospital has had 80 consecutive form 4 renewals and about the same number of Consent and Capacity Board hearings, which require two hours of the clinician’s time and all the members of the C and C board to show up, when everyone in the room knows exactly what the result is going to be because it’s been the same result the previous 79 times. If we had a slightly longer interval to work with, we could save an enormous amount of that resource. That’s one of the places we could get resource to actually focus on something like community treatment orders. I just mention that in passing as something we might want to consider.

Finally, about the civil commitment test: The much-maligned word “imminent” appears to be on the way out. There’s been more debate about the meaning of that word inside C and C board hearings and outside than you can imagine. It will help if it goes. More importantly, I think section 15(1.1) is a creative compromise in terms of broadening the civil commitment test just enough to allow for the admission and the management of some people who might have otherwise been questionable in terms of meeting the former civil commitment test.

On a positive note, in the last five years or so we now actually have some treatments that are sufficiently improved over times prior that we can say to people who are candidates for community treatment orders, “We have some medication for you that won’t do what medications always traditionally did,” that is, make your vision blurred and make you stiff and make you feel drowsy and doped and all those things. Some of the newer medications do allow a much higher level of comfort and, at the same time, effective control of symptoms as well. That is a hopeful development, the most hopeful development certainly in the time of my career.

I’m going to stop there because I’m running a little bit over the time.

**The Chair:** Thank you, Doctor. That leaves us about eight minutes in total for questions. We’ll divide it among the three parties, leading off with Mr Clark.

**Mr Brad Clark (Stoney Creek):** I appreciate your coming today, Doctor.

There was a study, *An Exploration of Outpatient Commitment’s Impact on Victimization of Persons with Severe Mental Illness*. That paper was published by the American Psychology and Law Society. There was a quote in there: “A North Carolina study of 184 subjects in a randomized controlled trial of persons with diagnoses of schizophrenia, schizoaffective disorder, other psychosis, or a major affective disorder found that increased days on outpatient commitment significantly reduces the odds of victimization.”

Victimization of the mentally ill is something I’ve raised a number of times in the hearings and in the consultations. It’s a concern of mine. This study would purport that community commitment, or in this case community treatment orders as being proposed under Brian’s Law, drastically reduces the odds of victimization. Do you share that opinion, or do you have concerns about that statement?

**Dr Fleming:** I wonder if you can clarify what you mean by “victimization.”

**Mr Clark:** Victimization of the mentally ill out in society, on the streets, whether they’re assaulted—they become victims themselves as a result of being mentally ill.

**Dr Fleming:** It probably does, because when people would be in the community on community treatment orders, they’re more likely to be stable and doing well in terms of symptoms. When the mentally ill get victimized in the community, it’s often because their symptoms are not, at that moment, under control, and they’re saying and they’re doing kind of bizarre things, at the least, or perhaps they’re behaving more aggressively, so that other people retaliate in their direction. That’s one of the criteria that we’ve often used under the third part of the current civil commitment test to keep people in hospital: that they’re so intrusive with their illness that they’re going to go out into the community and irritate people to the extent that they themselves will be assaulted.

**Mr Patten:** Thank you, Dr Fleming. I think most of the committee members have identified, and we’ve heard from numerous witnesses, that this is not going to work unless you’ve got the adequate resources available; and, of course, the worry that if, as you suggest, the literature shows that it can be effective in reducing some hospital admissions, but only with intense outpatient treatment, that ups the ante in terms of resources, as well. When you identify, albeit you’re in an acute care hospital, that your outpatient case managers have 50% higher caseloads than what they should be effective, then I guess you’re saying, “Listen, if you don’t have the resources, you’d better think twice about this.”

But given that the resources indeed are there, and there is a commitment by the government to do this, this might answer the question of the previous delegation, and that was, where does the ultimate accountability lie? It seems to me that it does lie with the hospital, the attending physician in a hospital, by and large. Would you read it that way?



**Dr Fleming:** I think these orders will largely begin in in-patient settings. I'm already thinking about our own hospital, in terms of how I think we'll tie our in-patient service even more closely with the community support team. They're going to start in hospital with an in-house doc that signs the order, as I read it, but it's going to be an outpatient follow-up team that's going to be named in the community treatment plan which has to carry it out, which has the responsibility for that. Those people are going to have to not only talk to each other, they're going to have to be very much on the same page in terms of how people are doing. We do some of that to a certain extent now, but I think it's going to have to be a joint effort between the in-patient origins and the outpatient support team for sure, or it has very little likelihood of succeeding.

**Mr Patten:** In your case, of course, you receive a number of forensic cases. One idea that the committee is examining, and there are probably some amendments that will be proposed, is the term itself. Whereas the roots of the history of CTOs is a court-legal system, this is really a medical plan, albeit it does have some accountability and some teeth to it. But it is a medical plan, maximizing the opportunity for it to be consensual, so our discussion is to look at a change of the term, because "order" seems to imply a correctional kind of forensic arrangement, which certainly scares off a number of people, externally and maybe patients likewise. We're looking at the term "community treatment plan" or "community treatment agreement." What would your response be to that?

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**Dr Fleming:** I don't have a problem with that. I think where this kind of thing may be most useful is in fact in cases where the patient is not capable of consenting and a substitute consentor is consenting to the community treatment plan or order. That's where I think it'll be most useful.

As I've said, I have a list of people who I think can be in the community with that kind of arrangement, who haven't been in the community in the last three years at all, notwithstanding the other candidates who may—we know we have a small group of revolving-door people who have on average about three admissions a year, every time their bipolar disorder relapses. I think it'll be useful for that small group of folk as well. They may be a little more problematic in that many of them when they are well are perfectly capable—at least on the surface of things—of making the right judgments about their treatment, until the day they decide not to and then things may go downhill.

I don't care what it's called. In its present form, it's not really an order, not in any sense an order like a Criminal Code disposition order is a very powerful order. People often complain about the open-endedness and the ongoing intrusion of that in their lives.

**Mr Kormos:** I hope I'm not using inappropriate language, but you mentioned new treatments—and I presumed you were talking about schizophrenia, perhaps other disorders as well—over the course of the last five

years. I wonder if you could elaborate for us a little bit on what you were speaking of.

**Dr Fleming:** I'm speaking mainly about the atypical neuroleptics. We have medications now that are vastly superior in terms of the side-effect profiles. They are comfortable for people to take. If anything, some of them are more effective in terms of simple control because they deal, at least a little bit, with negative symptoms as opposed to just acute symptoms, say, of schizophrenia. We have people living in the community on some of these new medications who haven't been in the community for a long time because they never could get comfortable or never were successfully treated with some of the older medications. More of those medications are coming in the future. There's some fairly intense interest on the part of drug manufacturers in a race to provide the next generation of this kind of treatment.

**Mr Kormos:** You were speaking, I think, of bipolar disorders when you talked about the treatment being effective until the day comes when the person decides to stop taking their medication.

**Dr Fleming:** Yes.

**Mr Kormos:** Is there anything about the nature of the medication? Does it create a disincentive to take it? I'm not being as clear as I want to be.

**Dr Fleming:** Certainly some of the old medications did, because they were uncomfortable. Almost no one escaped side effects with some of the older neuroleptics. Some of the new ones are much more reliable in terms of people continuing to take them. But in certain disorders, people just get feeling so well that they don't see the point any longer in medication or they like to think they can live their lives without the medication; or in the case of affective disorders, sometimes when people's moods start to run a little bit high, that's actually something they really like. They want to recapture the natural high of a mania and so they may stop the medication for that sort of purpose, and then they do get high.

**The Chair:** Thank you very much, Doctor, for coming before us here today. We very much appreciate your taking the time to make a presentation.

#### ONTARIO FEDERATION OF COMMUNITY MENTAL HEALTH AND ADDICTION PROGRAMS

**The Chair:** Our next presentation will be from the Ontario Federation of Community Mental Health and Addiction Programs, if they could come forward, please.

Good afternoon and welcome to the committee. We have 20 minutes for your presentation. If you so desire, you can leave time for questions as part of that.

**Mr Harry Spindel:** Thank you for giving us this opportunity to provide some input into this very critical legislation.

The Ontario Federation of Community Mental Health and Addiction Programs, the federation, is a non-profit organization representing 230 community mental health and addiction programs across Ontario. Its members



represent the majority of all community mental health service providers in the province from Kenora to Cornwall.

The federation acknowledges the efforts of this government to improve mental health services in Ontario. This has taken the form of additional funding for housing for homeless people who have a mental illness, additional funding of the highly specialized assertive community treatment teams and this legislative initiative.

The federation also acknowledges the difficulty of the matters embodied in the legislation proposed. The many unmet needs of people with mental illness are undeniable. The distress of families and their desire that their family members with mental illness are well cared for must be respected. The safety of people with mental illness and our communities is a matter of legitimate concern. We wish to assure the committee that Federation members have, both professionally and personally, the earnest and sincere desire to meet these unmet needs, expand our ability to provide high-quality care and provide for the safety of all concerned. The Ontario Federation of Community Mental Health and Addiction Programs strongly believes that the best way to accomplish these goals is to improve the community mental health system. We do not support the enactment of Bill 68 as it is currently constituted.

The Ontario Federation of Community Mental Health and Addiction Programs believes that the current Mental Health Act achieves a reasonable balance between the rights of the individual and the rights of the community. Specifically, we do not support changes to the grounds for involuntary committal, the enabling of community treatment orders, the conditions regarding when involuntary treatment may and may not be provided and changes to the law of consent.

We recognize that the act has often been misunderstood and misapplied—as it is today—which speaks to the need for increased education in the application of the current act rather than changes. We recognize that there are administrative impediments to proper utilization which should be addressed. We note that the act has provisions not currently being applied or utilized on a systemic basis whereby people who are involuntarily committed may receive treatment and rehabilitation in the community via a leave-of-absence provision.

Bill 68 perpetuates and deepens the stigma associated with mental illness. It is premised on the view that citizens who have a mental illness are a risk to self and/or others such that exceptional changes to their fundamental rights regarding treatment and consent are warranted.

Bill 68 was announced by government with specific reference to dangerousness. The news release read: "Health and Long-Term Care Minister Elizabeth Witmer today introduced new, stronger mental health laws to ensure that people with serious mental illness who pose a danger to themselves or others get the care they need.... Brian's Law will save lives and prevent other tragedies." This bill strongly associates mental health legislative change to a tragic, but rare, instance of violence.

This position is not supported by research regarding the propensity toward violence by people with mental illness, which has found that people with mental illness are no more violent than other citizens. Despite these findings, the stigma of mental illness continues to include the false notion that people with mental illness are dangerous. This stigma is perpetuated by the media, and sadly now this stigma is supported by Brian's Law. People with mental illness report hurt, sadness and discouragement as a consequence of stigma.

Paradoxically, the increased stigma associated with Bill 68 and the powers it proposes to confer upon doctors may well deter people from seeking care when they first experience mental health problems. The consequences may well be similar for people who have experienced such care in the past, who may avoid the mental health system in the future, disappearing into the subculture of the marginalized.

Many people who experience mental illness have already retreated from the mental health system that they do not perceive as helpful, respectful of them and their rights. In a California study of people with mental illness, 47% reported avoiding any traditional mental health services for fear of involuntary committal.

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The Ontario Federation of Community Mental Health and Addiction Programs respectfully requests that this bill be tabled for consideration of major revisions in the context of a broader legislative and service capacity review. The need to conduct such a review is even more necessary due to the wide divergence of understanding about the actual effect of Bill 68, suggesting that the bill will not clarify or make more effective the law as it relates to mental health. We note that the Saskatchewan legislation was developed over a two-year period, not a two-month period, which we regard as inadequate to deal with the complex issues related to matters pertaining to this type of legislation.

Our general policy position notwithstanding, the federation is committed to contributing to the development of the best possible new legislation for Ontario. If the government moves ahead with Bill 68, the federation will offer its input.

Chris will give some details about our recommendations if this legislation goes ahead.

**Mr Chris Higgins:** There is a range of very serious and powerful changes being proposed and I certainly can't address them all in detail. I'm going to whip through this as quickly as I may so that we have time for questions.

In the US, civil commitment has been termed a "massive curtailment of liberty," and in that jurisdiction this is only possible by due process of law and not by the opinion of a physician. Recognizing we have a different system here in Canada, the federation would nevertheless suggest that Bill 68 should stipulate the second physician is required to confirm an involuntary committal decision within 24 hours. That at least allows for some protection by two opinions being required.



Bill 68 entails a whole range of terms that are at least as hard to understand as "imminent." "Ongoing or recurring mental disorder": Should that include brain damage? Should it include only major psychosis? "Deterioration": Is that very broadly held? Deterioration occurs when you smoke. "Clinical improvement": In whose opinion and how many opinions? "Substantial need for treatment": What does "substantial" mean? "Responded well to treatment in the past": What's the context? Has anything changed? "Apparently incapable": Well, "apparently incapable" sounds like guesswork to me.

We suggest that the additional time that we've asked for be dedicated to, among other things, clarifying these terms in such a way that we won't exchange "imminent" for seven or eight terms that are even harder to figure out. That would require a provincial consultation process that would honour the views of all the stakeholders.

Failing that, we suggest specifically that we return to language including the word "imminent," replace "deterioration" with "impairment," because at least "impairment" is understood because we've been working on it for many years, and finally set a limit on impairment to three months.

Regarding police powers, police are not gifted with special ability to perceive what's going on. They're good folks doing a good job. They're not mental health professionals, and if they're confronted with unsworn and uncorroborated evidence about the state of somebody's well-being they have no way to know if that's true or false. So we suggest that the police need to observe a behaviour which they would consider disorderly, together with reasonable grounds for believing that that disorder is due to mental illness.

With regard to consent, we believe the current consent laws are adequate and should be left more or less intact. We have a couple of suggestions to add. We note that in this particular act it is suggested that health practitioners should be allowed to apply independently of a person's substitute decision-maker for treatment to be provided to that person against their will or without their consent. We don't think that's a good idea. We think that the Substitute Decisions Act and consent laws are adequate.

Regarding community treatment orders, rather than try to renovate the existing language, we would prefer to follow the lead of our colleague from CMHA Metro, Steve Lourie, and recommend strongly that the Saskatchewan approach be used. That's noted in detail, naturally, in the Saskatchewan law, which is accessible to you.

Specifically, I'd like to add a couple of other points. Not only should services exist in the community but they should exist in the community the person is from. It would not be adequate to say that there are services in Toronto, so we should ship somebody down from North Bay, or conversely, ship somebody from Toronto to a home in the far countryside away from their natural communities.

We also suggest that a community treatment order require the authority of two physicians. We would require that rights advice and support be provided to that person

directly prior to the enactment of the order. We would suggest also, as Mr Lourie did, that specific hospitals and psychiatrists be delegated that authority and that it not simply be designated to a class of individual across the province.

In terms of rights advice and support, we take the following position. Rights advice and support should be provided to inform a person of their rights and support them to exercise them. Furthermore, they should be available to all persons receiving or eligible to receive mental health care from publicly funded mental health services. That includes hospitals, community-based programs, individual doctors and so forth. We believe they must be provided directly to the person and they may be provided to the substitute decision-maker, but it would never be adequate, in our view, that they only be provided to the substitute decision-maker.

We believe that the rights advice and support should be provided by a disinterested party, be provided upon involuntary admission and within 24 hours of an application for a community treatment order and prior to its implementation and upon any application to the Consent and Capacity Board to rule on care received by the person.

Finally, such rights advice should take into account prior existing wishes that the person made while they were capable.

Regarding community mental health services, our organization represents the vast majority of such services in the province, and sadly I'm here to tell you that since 1990 the base budget of those services has been reduced 6.5%. Our costs have gone up every year since then and those services are shrinking, not growing. They will continue to shrink due to unfunded cost pressures and we estimate that at a minimum they will shrink an additional 30%.

All the ACT teams that have been put in place and all the ACT teams that are planned to be put in place will not nearly come close to the loss in services that are going to happen simply because these programs have been left to wither on the vine while new money is invested in new, very expensive programs. There is no community treatment unless there is a community mental health system, and it's not just medication. If the existing system is left to run into the ground, non-profit boards are now faced with possible bankruptcies because of unfunded liabilities that they're carrying on their audited statements. You will not have any community system and all you'll have is people ordered to take their medication.

Specifically, we support the position that standards of care, treatment and psychosocial rehabilitation should be established in legislation, including the right to access a full range of such services. Specifically, the Ministry of Health should fund a full range of such services in sufficient volume to meet the needs of the people with mental illness in their own communities, and this includes supported housing.

Second, the Ministry of Health should also fund a full range of addiction services for people with mental illness



in sufficient volume to meet their needs, because many of these folks have more than one problem.

Publicly funded access to a full range of medication, including the newest generation of anti-psychotic drugs, should be as of right. People should not have to work their way through low-cost, ineffective medications, suffering from many side effects and many adverse experiences and developing an ongoing antipathy to medication, before they finally have the privilege of taking the good stuff. No one would expect that for any other person. Why would we expect it for these folks?

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Finally, we would suggest that if people can't get to the programs, they will be of no good even if they exist. Recently we've had the transportation allowances for people who need to access community mental health programs cut by the ODSP program. We would recommend that they be reinstated for all community mental health services funded by the province of Ontario. You can't get care if you can't get to care.

Regarding accountability, this bill proposes to confer upon physicians, possibly designated facilities, rather enormous powers to curtail the liberty of somebody, to enforce conditions of medication, to enforce conditions of treatment. Those things should not be given without an accountability link. We think that both civil and criminal accountabilities are required and that no one should be absolved of their responsibilities.

Although the modern medications are much better than the old ones, they are still quite able to cause permanent brain damage, they still can kill people and they are still frequently overprescribed, that is, they are prescribed in much larger doses than they need to be. If people are not accountable for the medication regime that is forced upon an unwilling client, I don't see that we have real accountability in our mental health system.

Finally, Bill 68 should not be enacted until the community mental health system is in place to receive and serve those folks and until proper education about the Mental Health Act is provided—we have already learned that a Mental Health Act that nobody understands does not work well—and such education should be provided prior to implementation.

Rights advice and support resources should be deployed and available on a provincial basis, and a sunset clause should be incorporated into the act which recommends a specific date for review and amendment according to what we learn.

Finally, the provincial government should help redress the issue of stigma by funding a major anti-stigma campaign that begins one year prior to the enactment of this act, reaches all citizens of Ontario and is sustained for two years at minimum. If we have inadvertently, meaning no harm, linked criminal behaviour and violence to an act that is intended to provide better care, then it behooves the government to help us redress the additional stigma which has perhaps accidentally been created.

Those are our chief recommendations. Beyond that, we support those of the Canadian Mental Health Associ-

ation, Ontario division, which has created a much more detailed report on a clause-by-clause basis.

Thank you for the opportunity. We'd be happy to answer questions.

**The Chair:** We've got about a minute and a half left, so we'll give all the time to the next party in rotation, which is the Liberals.

**Mr Patten:** Thank you very much. By the way, I would say that many of the issues you have raised and the recommendations you have posed are certainly on the table for the committee in terms of amendments to what is there now.

**Mr Higgins:** Excellent.

**Mr Patten:** I think you might find that encouraging.

I would like to respond to one area because it's come up time and time again and I think it is a little misleading. Here's what I'd like to say, and I almost fear saying it because I don't want to be misunderstood. It's that the people who have mental illnesses are no more violent than the general population. I agree with that statement generally, except that supposition then goes on to say, "Therefore, they are no more dangerous." What I'd like to point out—I think the literature indicates this and I would refer to a few pieces you might respond to, because you made this statement as well—is that there are subgroups, however, in some instances—paranoid schizophrenics, males suffering from addictions or whatever; you can construct a certain scenario—where the risk of violence and danger to themselves or others is 10 times what would be in the normal population and even the mental illness population as a generalization. I know there is always the referral to this one example, but in my opinion it does not face reality.

Dr Arboleda-Flórez, who heads up the psychiatric department at Queen's University, provided some statistics, which never come out very often. He talked about patients and that 25% of patients present fear-inducing behaviour during the previous two weeks before admission to a psychiatric hospital; 32% present such behaviour at the emergency; 13% attack emergency personnel—nurses, what have you—20% admissions to acute psychiatric units have committed violent assaults during the previous two weeks before admission; 60% attack relatives. This is an area where there's very little research, only anecdotal, and surveys and discussions with parents, because parents do not want to charge their spouse or their offspring, their son or daughter or whatever it may be. They don't want them to be criminalized. I find it's an extremely sensitive issue and I would be the last person, believe me, to ever want to propagate this image. I say to people when they ask me about this, "If you have fears about people being dangerous, yes, but we're talking about a very small subgroup within that category." But indeed that subgroup does exist. Would you take issue with what I'm saying?

**Mr Higgins:** Let me say that if you select down specifically enough to a very narrow population, then you might be able to make that case.

**Mr Patten:** Which is what this bill is attempting to do. It's a very small population.



**Mr Higgins:** But it is a far broader bill than that, using words like “deterioration”—not “impairment” but “deterioration” and so on. It casts the net far wider than you’re suggesting.

I would also say that if you are going to deprive people of their rights under the law regarding consent and deprive them of their liberty by hospitalizing them against their will and so on, on the basis of an extremely small subset, and you’re going to capture a very large set, then I think something has gone wrong. If you select a subset of ordinary citizens who happen to be in Kingston Penitentiary and then say, “Those folks are likely to commit violence at a higher level, and since most of them come from a certain socio-economic strata, we will now craft law differently for that strata,” I think you’ve reached a self-fulfilling prophecy where you’ve selected folks to such a degree that you say, “Now we’re justified in limiting the rights of a much larger set of people on the basis of those exceptional people.”

I was just reading research today that suggested that even those mentally ill who happen to have gone to jail as a result of some criminal behaviour are recidivist at a much lower rate than the rest of the jail population, than the rest of the people who have been in jail. I wasn’t able to print that report for today, but I think the final analysis is that we believe every citizen of Ontario should have equal rights under the law regardless of their disability. The fact that you might be able to predict that some citizens do violent things does not mandate or does not support the notion of lifting the rights of all citizens of that class.

**Mr Patten:** The bill does not try to do that, in my opinion, but perhaps it needs to be clarified.

**Mr Higgins:** I guess that’s part of the dilemma here. I know in the hearings there have been many different understandings. Some folks understand it to be narrow; some people think it is as wide as it can be. My colleague at CMHA suggested that virtually all of his clients would have been. I know when I did direct service as a staff member, as an agency manager, virtually every single person in my agency would have been eligible for a community treatment order under this act. That’s my experience. I would put it to you that if all the mental health professionals of Ontario are looking at this act and seeing very different things, clarification is not well served, nor are the people it’s supposed to be helping.

**The Chair:** Now you know, with a minute and a half, why I didn’t try to split it—a long minute and a half. Thank you both. We appreciate your taking the time to come before us here today.

ERIN FITZPATRICK

**The Chair:** Our next presentation will be from Ms Erin Fitzpatrick. Good afternoon and welcome to the committee.

**Ms Erin Fitzpatrick:** Would it be possible to have a timekeeper?

**The Chair:** Sure. What would you like, a one-minute cue, a two-minute cue?

**Ms Fitzpatrick:** Four.

**The Chair:** Will do.

**Ms Fitzpatrick:** Good evening. For the record, my name is Erin Elizabeth Fitzpatrick. In my professional life, I function in various capacities. These include psychiatric social worker, acting psychiatric patient advocate, formerly affiliated with the Psychiatric Patient Advocate Office, which is an arm’s-length body of the Ministry of Health; general private practice social worker; legal researcher; and faculty of medicine, department of psychiatry lecturer to fourth-year residents in psychiatry.

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Also for the record, it is significant that it be noted that I requested standing to speak in front of this committee on May 17 at 3:15 in the afternoon. I was in attendance at all prior Toronto hearings and I was debating the necessity of my presentation. On this date, May 17, after consulting with my colleagues, associates and those involved in various disciplines, endeavours and various degrees of experience with the members of our collective community who will be directly and indirectly affected by Bill 68, I felt I should put my name forward to speak to you here today, and I thank you for that opportunity.

For the record, that community of which I was just speaking is really in fact—is it not?—every single one of us in this room today and every single person who has also been in attendance at every single one of the hearings that this committee has determined it is necessary to hold. As we all know, it’s very unusual to hold public hearings after first reading of a bill, so we are all acutely aware of the, shall I say, irregular nature of the forum here today. Further, every member of our collective community is truly every one of us here, though in very different capacities.

The very esteemed association, the Canadian Mental Health Association, published an awareness quiz, and I quote from my submission, which unfortunately due to some scheduling problems I was not able to have in front of you but I’ll be pleased to provide after: “One in three Canadians will experience a mental illness some time during their lives, one in eight serious enough to require professional care. No one is immune to mental illness.”

For the record, I have been granted 10 minutes in which to testify, in “whatever capacity I feel appropriate.” As many of you are aware, 10 minutes under the current rules is allotted for either expert testimony or “testifying as an individual.” Owing to the several capacities in which I have been intimately involved with the issues of Bill 111, then Bill 76 and now Bill 68, I find it difficult to determine in 10 minutes which of the numerous aspects of Bill 68 I would very much like to bring to your attention and have enshrined on the very important record that is being created as we speak. Since I was advised after significant lobbying that I would be granted permission to testify in front of you here today at 4:26 this afternoon, I have now had exactly 46 minutes to



prepare this submission. I apologize if it is not as well prepared as I would have hoped.

Thus, despite my text, as you see I have with me, my submission which I had previously prepared includes various sources of research that I have been collecting since March 1995 when I began to have a very significant interest in the area of community treatment orders and mental health legislation as it affects our collective community. This is research that I'm very eager to share with you for a variety of reasons. Clearly, it is impossible for me to even list the 133 sources that are cited in this text in my 10 minutes, of which I now have used—

**The Chair:** Five.

**Ms Fitzpatrick:**—five. Thank you.

Thus, I will attempt to be direct, clear and succinct, owing to the constraints that I am under. What is this bill all about? If I am correct, I am the last person to be testifying in Toronto with respect to the bill as it now stands, Bill 68. As we all know, in clause 48 of Bill 68, it has been given another title. For many reasons, I will choose not to use that name because so far no one has accurately used clause 48 in its entirety; rather, it has been abbreviated, which is contrary to legal standards, as every lawyer is aware if they have turned their minds to this issue.

Hence, back to my text, when I now have four minutes to present to you what I feel is the crux of what really needs to be conveyed, and that is the following: This bill is about communication and understanding. In my capacity as a psychiatric social worker, I feel that it is imperative that we discuss communications and understanding. To my knowledge, there have been no psychiatric social workers, nor any general practitioner social workers who have had the opportunity to speak to this committee thus far in Toronto. Hence, I feel an ethical obligation to bring the issues that are extremely pressing to my colleagues in this particular discipline, as well as those shared by my colleagues who also practice in community mental health, to the table for discussion.

Again, this brings me right back to the issue of communication and understanding. I now have two and a half minutes to conclude my submission, but I would like to know, are we communicating, are we understanding? Can anyone, can all of us communicate and understand what Bill 68 entails and what its implications will be should it pass second reading and should it be brought into law, as it stands or with the several amendments that have been proposed by the numerous well-informed and well-meaning individuals who have also testified and have also brought their concerns to the attention of their MPPs, to this committee and to their various other advocates, associates, colleagues and people to whom they feel could have an influence with regard to Bill 68?

Again, I return to communication.

Je suis plus confortable quand je parle français, et c'est vraiment la communication; encore, vraiment. J'ai demandé s'il était possible d'avoir une conversation dans cette chambre, et la réponse était que non. Alors, est-ce qu'il y a de la communication maintenant? J'espère que non.

So I will return to speaking in English, because I feel that it is exclusionary for me to speak in the language of my choice, which is French, today. Tomorrow might be English again, but today I feel like speaking French. Further, I could speak in legalese—for going to law school does teach you one or two things. Speaking in legalese, I would like to quote to you a passage from my submission. It pertains to discrimination. I will borrow the words from the Supreme Court of Canada, as stated in *Andrews v Law Society of BC*. Footnote: [1989]1 SCR 357—that is, Supreme Court Reports, for those of us who are not legally trained—[hereinafter *Andrews*]. It states as follows:

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"Discrimination is unacceptable in a democratic society because it epitomizes the worst effects of the denial of equality, and discrimination reinforced by law is particularly repugnant. The worst oppression will result from discrimination measures having the force of law. It is against this evil that section 15"—for those of us in the room who are not familiar, that section 15 is from the Charter of Rights and Freedoms enshrined in our Constitution since 1982, which was brought into force in full in 1985, which was 15 years ago if I can count—"provides a guarantee."

I would also speak in the language and the tone of a social worker.

**The Chair:** Perhaps you could conclude in one minute. We're already well over the time.

**Ms Fitzpatrick:** In one minute, then, I will conclude.

Please note how difficult it was for me, someone who is relatively healthy today, someone who has been fortunate enough to attain four university degrees, including a law degree and a master's in social work, both with a specialization in health care and science. The communication and understanding has been difficult, has it not? I would like you to think about this 10 minutes, and please be aware that this is the approximate amount of time that many of those who are currently directly affected by the Mental Health Act and the Health Care Consent Act have to try and communicate if they are lucky enough to relay their information to someone in the health care profession in an attempt to attain some sort of help and understanding.

In closing, I wish to leave you with two quotes. I feel my microphone is not working so I will raise my voice.

The first quote is from a consumer-survivor I encountered while she was having a very challenging time. She borrowed the words of Anne Morrow Lindbergh in her attempt to try and convey to those without mental health problems what it was like to live with a mental disorder. She said: "It is not the desert island nor the stony wilderness that cuts you from the people you love. It is the wilderness in the mind, the desert in the heart through which one wanders lost and a stranger."

My closing to you today is the following. I borrow the words from Carl Jung: "The meeting of two personalities is like the contact of two chemical substances; if there is any reaction, both are transformed."



It is my sincere hope that there has been a meaningful reaction here this afternoon and that I have given you some things to ponder regarding Bill 68.

My support is with the recommendations of many of those thoughtful presenters who have appeared before the committee today.

I would like to thank you sincerely for your time and offer my further services if that can be of assistance at all to you in your continual review and appreciation for the struggle of those affected by mental illness.

**The Chair:** Thank you, Ms Fitzpatrick.

With that, we had agreed as a subcommittee that we would allow a few minutes for each party. We'll start with you, Mr Patten, if you have any closing thoughts or comments.

**Mr Patten:** The first thing I want to say is that people should know that this procedure of going to hearings before second reading, which is when you really get the full reaction of all parties to the particular bill is, so far, quite encouraging. I think you've seen fewer partisan shots across the committee table. This tends to, I hope, help those who are putting forward the bill on the government side to be perhaps more open, because now you can incorporate some of the thoughtful recommendations of the witnesses who have testified before us. Certainly I can speak for myself and members of the Liberal Party. We have already put a number of recommendations and amendments to the bill on the table.

In summary, I will be speaking on the bill in the House, which will give me much more time than I have at the moment, except to say that one of the common denominators throughout all of this was that regardless of the amendments and which ones are finally adopted by the government, there is almost universal recognition that there need to be more resources in the community and that indeed there is no point in proceeding with the implementation of what I like to call community treatment agreements unless there are resources and a provision in the section that deals with community treatment agreements says so. That is fundamental to everything.

The other is the strong identification in all corners about the rights of individuals. I think everyone has felt that passionately, and there are amendments to that effect.

I know we will have an opportunity after second reading to come back and deal with amendments in legalese. Some have already been put forward for some consideration. My sincere hope is that all three parties will have a fundamental basis of agreement on this, because I truly believe this is a non-partisan issue, and I think we have, to this stage, operated on that basis. Mr Chair, I would say you have and I congratulate you for that. But I do believe we will need to provide some support at this stage for at least a position of the committee as regards a preamble. I will wait, Mr Chair, for you perhaps to address that.

I wonder if I might pass this to my colleague Lyn, who has been through most of this as well. Would you like to make a few comments?

**Mrs McLeod:** I think Mr Patten has covered the ground very well. I just want to reinforce that if I have a lingering concern as we go into the second reading, and hopefully the amendment process, it's that we be very clear. I think one of the presenters this afternoon identified the fact that as the act currently stands, there is some confusion about the target population that could benefit from the community treatment orders. That's certainly a concern that we tried to focus on in the amendments that we wanted to support and the amendments that we are looking at obviously came from the submissions that were made to us. But that clarification, which is one of the things we thought could be addressed in the preamble as well as in some of the specific definitions of the target population, along with the added safeguards in terms of individual rights' provisions without it being so cumbersome that the act couldn't work, were the concerns we wanted see addressed in the amending process.

**The Chair:** Thank you both.

Mr Kormos, I know that you've only substituted in for the day, so it's a bit unfair perhaps to ask you to play catch-up, but if you have any comments.

**Mr Kormos:** Not at all. I think I'll rise to the occasion, Mr Chair. I'll do my humble best.

I don't purport to speak for Ms Lankin. She has followed the submissions and the proposed amendments that are to be inferred from those submissions and perhaps the general response of the committee. But I do want to say on my own behalf—even being here this afternoon and seeing, for instance, Dr Fleming, and hearing Dr Fleming—his reputation precedes him. He's well acknowledged in Ontario and beyond as having great expertise, particularly in the area of schizophrenia. He brought the American study that appears to be a one-year study. At the same time, shortly after he left, we hear from the Ontario Federation of Community Mental Health and Addiction Programs and their reference to a report by the International Association of Psychosocial Rehabilitation Services that talks about the effectiveness of medication, mental health treatment and rehab depending upon the willing participation of the consumer.

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These are the sort of contradictions that I trust the committee's been confronted with on a daily basis as the committee has sat.

I've got to tell you, Chair, and I tell this committee again—not on behalf of Ms Lankin; she will undoubtedly speak in her own right—that I am very concerned about this legislation. Earlier today we heard the reference to the utilization of the criminal justice system as a depository, if you will, for persons with mental illness. Yet I have to tell you, at the end of the day, I'd far sooner be busted under the Criminal Code, with the right to an advocate, the right to a lawyer, the right to a speedy appearance before a justice of the peace, for instance, than I would being apprehended for purported mental health treatment.

Similarly, we heard from Dr Fleming and it was unfortunate that we couldn't have expanded more. He



made reference to the nature of treatments over the course of the last five years. He very briefly described some of these medications and indicated that they didn't have the same side-effect disincentives for people taking the medications to take them. Well, I saw some heads shake among people in the audience that suggested to me that there could be a rebuttal to that, that there could be a response to that.

I'm also discouraged. I come from down in Niagara, from typical small-town Ontario. We have got psychiatric services down there that are stretched to the limit. We've got two psychiatrists serving the community where all they're doing is crisis intervention. They can't do the co-operative, ongoing treatment that includes therapies beyond medications or in addition to medications that, as I understand it, are critical if you're going to have a complete and holistic—is that a fair word?—response to mental illness or various forms of mental disorders. I've got two very skilled psychiatrists down in my community who are pushed to the limit, who are stretched, who spend all their time—OK, I'm generalizing, please—but who spend the vast majority of time—oh heck, all their time—doing crisis intervention using medications to take people down from the ultra-hallucinations and delusions and the ultra-psychotic states.

I am disinclined to support legislation that does not accord people with illnesses the same minimal rights as we accord people who are accused of criminal offences.

Again, understanding the study produced by Dr Fleming about involuntary treatment and its effectiveness, in contrast to the statement made, for instance, by the International Association of Psychosocial Rehab Services, which appears to say the exact contrary, I'm very troubled by the approach. It's clear I'm not impressed with the approach. I have great concerns about the rights of all Ontarians, Canadians; their right to get treatment.

I'm disturbed by the one observation, statistics, the material presented today which talked about the existence of CTOs as a disincentive for people to voluntarily report themselves when they think they need psychiatric treatment for fear that will constitute a first mark against them in terms of building up points, if you will, so as to lead to a CTO.

I agree with observations, I'm sure, made by everybody about the de-stigmatization of mental illness and the fact that we've got to understand the stats—one in three, one in eight. The fact is that any one of us is as capable as the other of being personal witnesses to our own disorders or our own mental illnesses.

I'm concerned, I suppose, as a civil libertarian, perhaps as a lawyer, as somebody who has some intimate familiarity with families and individuals with serious mental illnesses and their struggles, both at the family level and the individual level and who has witnessed some incredible successes by people but has never witnessed those in the context of compulsory treatment.

Thank you kindly, Chair.

**The Chair:** Thank you, Mr Kormos. Mr Clark.

**Mr Clark:** Before I get into my closing remarks, I think it's incumbent upon me to correct the record in terms of the last presenter that we had. The implication was made that she only had about four to six minutes, in which time she couldn't do a written response. I think it's important that everyone understand that the process of these hearings was set out on the very first day back on May 10, and it stated very clearly that the deadline for receipt of written submissions be 5 pm on Monday, May 29. She had ample knowledge; she had been in touch with the clerk's office on May 17, and since she has colleagues sitting with the mental health legal committee, she clearly understood the rules of the process. I don't want it to be left out there that someone didn't get an opportunity or we somehow cut them short.

The process, as my colleagues have mentioned, is extremely unusual. I have to say at the outset, as someone who in the House consistently tries to argue for non-partisan solutions to policies and issues, I was really reticent to get into this process because it is new. We're experimenting as we go. In many cases we're flying by the seat of our pants. Standing orders—and in some situations we're finding ourselves at odds and we're trying to make sure we're meeting the intent of the standing orders doing this after first reading.

The overall philosophy of everyone who's participated in the hearings as witnesses and all of the members here on the committee I think has been very clear: that there's a need to improve the mental health system in the province. I think there is consensus there.

There is no doubt, as my colleague from Niagara has stated, there is a wide viewpoint, from one extreme to the other end and all the way in the middle and disparate viewpoints therein. Our job as legislators obviously is therein to find the balance; to protect individual rights; to provide treatment for patients; to protect the society. It is a balance that we are trying to achieve.

I've been very pleased with the process and, I hate to say it to my House leader, but he was right, we could get this through after first reading and do the debate now in terms of dealing with the issues.

I'm also very pleased with how the opposition and the government has worked together in terms of the amendments. I had an opportunity to meet with the critics of the opposition party earlier today and it's been a long day for me. There are a number of amendments that have been proposed. I wish to advise the opposition members that I have gone over all of them again. I have not had an opportunity to go through them with the minister or with my caucus or anyone else. We will be doing that.

There's at least 10 to 15 of them that I immediately see the merit of and I'm on side. There are others that I think the government side will be looking at in terms of tweaking some of the clauses to make them more clear, to articulate it better. That's the intent, again, of the legislator.

The issue of the preamble is something that has come up. Can we just pass them to all the members please? The preamble has been something very unique—and I'm



cognizant of the time. Normally, a preamble is done at the very beginning of an act. Well, we're amending the Mental Health Act and the Health Care Consent Act and there is no preamble to either one. So the suggestion has been made that we have a preamble to this bill, and earlier today the opposition members gave me some suggested text for the preamble.

The difficulty I then found myself with was trying to get the text approved by the minister and everyone else who's involved in my caucus. To be quite frank, I couldn't get it done because I couldn't get everyone together. I met with the clerks and I met with the legal people. The issue for us is, we want to make sure there is an opportunity to have a preamble. The only way we can do it, because of this bizarre circumstance we are in in terms of committee hearings right after first reading, is to move a preamble so that it's on the record at first reading and that will allow us the opportunity in clause-by-clause to amend it to deal with some of the issues that the opposition parties wanted in the preamble and we can debate those and view it at that time.

I want them to understand that I'm not trying to pull anything, but the difficulty is I just could not get everyone together to deal with all of the different things you were dealing with, because some of the items you brought forth we're looking at dealing with in clauses. I would rather deal with them in clauses and have it directly in the statute as opposed to in the preamble.

My suggestion is the preamble which I've provided you, and I hope we have consensus to move it forward so we have an opportunity to deal with it down the road.

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Other than that, I'm looking forward to dealing with this through the debate. Again, I want to thank specifically Richard Patten. He has been very supportive and very non-partisan in our attempts to deal with this. Frances Lankin also has been tremendous all the way through; Lyn McLeod, Marie Bountrogianni, everyone, and my colleagues on this side, Julia and Toby. Chair, thank you. I didn't know if we'd get through this process, but you did a spectacular job, and I'm in your hands at this point in terms of how we proceed.

**The Chair:** Thank you, Mr Clark, and I'll add a few—

**Ms Fitzpatrick:** Do I get to respond?

**The Chair:** No, I'm afraid you don't, Ms Fitzpatrick. We were very generous with the time. If you have any other comments, please supply—

*Interjection.*

**The Chair:** Your microphone isn't on. It's not being recorded for Hansard.

I want to thank all the members. I think it's been only the second time that a committee has proceeded through after first reading. The first act was the franchise act. It was very successful. I think this has proved the merits to the changes to the standing order last year, that we really can make some progress before the bill has actually even gone back for agreement in principle.

So without any further ado and with a reminder to anyone who has not sent in written presentations that they can still be sent in to the clerk and they would form part of the deliberations of all the caucuses before we actually go into second reading debate; it would just be too late to be part of the considerations here. I want to also make it clear to the audience that when we do what we're about to do, we are certainly not suggesting the act move forward without change. It's just that this isn't the arena in which we make those changes.

With the final reminder that when we come to the appropriate section where we normally deal with the preamble, we'll need unanimous consent to add a preamble and then we would have the vote. Having said that, I would ask the committee members, are there any comments, questions or amendments and, if so, to what section?

**Mrs McLeod:** Now you've confused me. My understanding is that the only specific issue that we would be commenting on in terms of a potential motion today would be the proposed preamble motion from the government?

**The Chair:** That's normally dealt with after the short title of the bill.

**Mrs McLeod:** Are we moving to clause-by-clause now?

**The Chair:** Yes, because we have to do that to refer the bill back into the assembly.

**Mr Clark:** We go to clause-by-clause at second reading. After second reading we go to clause-by-clause to deal with all of the amendments for the final time. This is just to get the bill—

**The Chair:** The clerk advises we have to put the question, but remember, this is identical to the normal voice vote we would be taking in the Legislature, just yea or nay to allow something to stand ready for second reading. So you are not in any way abbreviating or eliminating your ability to make amendments or comments at the normal time. This simply gets it back into the assembly in a manner in which we can then move forward on debate—and if you see fit, with a preamble.

**Mrs McLeod:** So your request for questions or comments is really on the preamble at this point?

**The Chair:** No, if you have any other issues—but it's a formality. I have to ask that question, as Chair. Yes, Mr Patten?

**Mr Patten:** Because this is unusual, and I'm saying this for the benefit for the witnesses who are here today, the people with us, normally this would be after second reading, and then we would be actually going through and dotting the i's and crossing the t's and arguing about this word should be substituted for that word, and we'd vote on it etc. But because we haven't had our full debate yet, but we're still required to go through the motions, as it were, we do need to acknowledge and vote through something, knowing we're coming back at it to do the real job after second reading. That's not the job today, but we have to go through a pro forma exercise, I gather—



**The Chair:** Yes.

**Mr Patten:** —as we are advised by the clerk, in order to proceed to second reading, continue to entertain and negotiate and recommend amendments, and then we come back after second reading to really do what normally would happen.

**The Chair:** That's correct. Thank you. Mr Kormos, you had a question?

**Mr Kormos:** I've listened carefully to what the Chair has said and to what Mr Patten has said, but I applauded the concept of committee after first reading because I understood that it would allow for there to be amendments before the bill was returned to the House for second reading, so that it could be debated on second reading, as amended. It seems to me that if you're not doing that—just very briefly—then you're defeating the purpose of having committee hearings after first reading. I'm simply pointing that out. That's my concern about the procedure.

I assume the Chair is directing that that's what the rules require, and that's fair enough. You've got no control over what the rules say, but that leaves me very concerned about the process, because if we are then back at point one or point zero because it doesn't permit the two kicks at the can, if you will, that committee hearings after first reading would normally appear to provide, I have concerns about that.

**The Chair:** Mr Kormos, perhaps I can allay those concerns. I am loath to put words in the mouth of any of my colleagues on either side, but I can tell you in no uncertain terms, Ms Lankin is fully aware of the process. The issue will be the format with which amendments or proposed amendments and areas of common interest move forward. The clerk has circulated a letter that said we can either do that as a group separately via a letter to the minister or each caucus could forward those comments. But the House order itself that referred the bill to us does not allow for clause-by-clause deliberation of the amendments. It does allow us to determine what we would like to see changed in the bill, and the advantage that gives us is, even when we start second reading debate, we know the areas that we've reached an accommodation on. There will be no reason to take any debating time on those matters, and you can move on to the relatively few, we hope, areas where there might be a difference of opinion.

So I absolutely guarantee to all the members here there is absolutely nothing untoward in this. It is merely that as a new process, we still are caught by the convention that to order something out of committee, there are about five questions I have to ask, but I want it clearly on the record that we are in no way interrupting your ability to propose amendments and to reflect on what we've heard during these hearings.

**Mrs McLeod:** I fully appreciate that. I will have a question that I trust can be addressed before we officially adjourn today, and that question will be the process for understanding which amendments may not be moving forward with consensus and which we will want to

submit to legislative counsel ourselves and the time frame that we'll have to do that, which is an issue I raised at the beginning of the process. So I will look for some direction on that before we leave.

The reason I asked about the motion that was to be placed on the preamble was that I understood this is something out of the ordinary five questions that you would pose. I was going to ask a question about the preamble, if that's something we're voting on today, that's all, fully understanding that the preamble itself can be amended, and I appreciate that.

**The Chair:** Feel free to pose the question.

**Mrs McLeod:** My question was really quite a simple one. The preamble as presented in the government motion is pretty basic and I just wonder if the parliamentary assistant might give some comment as to how this enhances the bill, this particular preamble, what seems a very general statement.

**Mr Clark:** With complete respect, the issue for us on this preamble—everyone agreed that they wanted a preamble in it because of the shortness—

*Bells ringing for a vote in the House.*

**Mr Clark:** Is it a five-minute bell?

**The Chair:** No, 10 minutes.

**Mr Clark:** With the shortness of where we are—and I simply could not get the items that you had mentioned and Frances had mentioned; I couldn't deal with it—I wanted to make sure that you didn't lose the right to have the preamble.

**Mrs McLeod:** That's fine

**Mr Clark:** So that's why I came up with a generic.

**Interjection:** We trust you.

**The Chair:** There has been a lot of trust built up so far in the hearings. I think we've got a long time to live with the new standing orders and I would hate to see us lose the momentum we've developed so far. Maybe after the franchise act, Bill 68 will be the second successful use of post-first-reading hearings.

Again, to simply go through the formalities, if I may, I've asked about any other comments or questions. Seeing none, shall sections 1 through 47 carry?

**Mr Kormos:** Recorded vote?

**The Chair:** Recorded vote, absolutely. All those in favour?

**Mr Clark:** The agreement was a voice vote. Frances asked for a voice vote.

**Mr Kormos:** I will withdraw my request for a recorded vote.

**The Chair:** Thank you, Mr Kormos. Clearly a new era.

Shall sections 1 through 47 carry?

Carried.

Shall section 48, the short title of the bill, carry?

Carried.

This would be where you would read the preamble, Mr Clark. Forgive me. Is there unanimous consent to introduce a preamble? Agreed.

**Mr Clark:** I move that the bill be amended by striking out "Her Majesty, by and with the advice and consent of



the Legislative Assembly of the province of Ontario, enacts as follows:" and substituting the following:

**"Preamble**

"The government of Ontario believes that it is essential that all components of the mental health system, including legislation, support the creation of an integrated and coordinated system. An important element of this vision is the striking of a balance between individual rights and the need to provide mentally ill persons living in the community with meaningful care and treatment.

"Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows:"

**The Chair:** Any questions or comments?

**Mr Kormos:** Very briefly, again, this is the first opportunity Ms Lankin would have had to see this. The prospect of balancing individual rights with anything else is repugnant to the concept of rights. With all due respect, you either have rights or you don't, and to talk about balancing rights or compromising rights is a very dangerous proposition.

I'm sorry. I will not support this. I will oppose this because this language of "balancing" implies that you can violate individual rights to pursue some other goal. I don't believe that is necessary to have an effective mental health care treatment system and I think it's dangerous language in the preamble.

**The Chair:** Seeing no other comments, shall the preamble carry?

**Mr Kormos:** A recorded vote, Chair.

**The Chair:** I had already asked the question, Mr Kormos.

**Mr Kormos:** I asked you for a recorded vote.

**The Chair:** OK, Mr Kormos wants a recorded vote on the preamble. The clerk will take the roll.

**Ayes**

Barrett, Bountrogianni, Clark, Dunlop, Munro, Patten.

**Nays**

Kormos.

**The Chair:** The preamble carries.

Shall the long title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? I shall report the bill to the House.

With that, I thank everyone who's participated, the witnesses and the members of the committee. Good luck getting up to vote.

As a closing comment, Mr Clark will undertake to provide a series of meetings with the other two parties.

*The committee adjourned at 1752.*







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## **Legislative Assembly of Ontario**

First Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 12 June 2000**

# **Journal des débats (Hansard)**

**Lundi 12 juin 2000**

### **Standing committee on general government**

Brian's Law (Mental Health  
Legislative Reform), 2000

### **Comité permanent des affaires gouvernementales**

Loi Brian de 2000  
sur la réforme législative  
concernant la santé mentale

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 12 June 2000

Lundi 12 juin 2000

*The committee met at 1648 in committee room 1.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'd like to call the committee to order. Before I announce the nature, I guess I should report that we had a subcommittee meeting earlier this afternoon. The subcommittee has recommended that the committee meet to conduct clause-by-clause consideration of Bill 68, commencing at 4:45 pm on Monday, June 12, 2000, and at the committee's regularly scheduled meeting time on Wednesday, June 14, 2000. I think, if I could, I'll ask someone to move the adoption of the subcommittee report.

**Mrs Julia Munro (York North):** I move the adoption of the subcommittee report.

**Mr Gilchrist:** Thank you. Any debate?

**Ms Frances Lankin (Beaches-East York):** I just want to indicate on the record that one of the reasons we are commencing at 4:45 is to give an opportunity to committee members to take a look at the amendments. I, in particular, had requested that. The entire package of 82 amendments was only compiled and made available to committee members sometime during the process of the time in question period, due to absolutely no fault of the clerk's office, which did heroic yeoman's duty in getting these reproduced, collated and sent around, but as a matter of the tight time frame we're on and the amount of time it took to go through legislative drafting.

I simply want it recorded that while there's been a tremendous amount of co-operation on all parties' parts, the Chair, the committee and the clerk's office to facilitate the best work we can do as legislators on this, the time frames that have been imposed on us for working are totally unacceptable in terms of an appropriate review of complex and significant legislation.

Having said that, I spent the 45 minutes that the subcommittee graciously accorded us and am as prepared as I can be in that time frame to proceed with at least the first part of the amendments here this afternoon.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of adopting the subcommittee report? Opposed? It's adopted.

That takes us to clause-by-clause consideration of Bill 68, An Act in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996.

You should all have an amendment packet in front of you, including one change the clerk has drawn to the attention of all members. With that, we'll start with page 1, government motions.

Perhaps, if I can help, Mr Clark, it's my understanding that the first amendment is withdrawn and will be replaced by amendment 3A, if members can put that in the proper position. It's six of one, half a dozen of the other which of us makes that announcement.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** Perhaps if I can help just quickly, the changes were to change words like "repealed" and "struck out," to substitute the words. It's really just a wording difference as opposed to a substantive change.

**The Chair:** Correct. Which would then beg the question, any further amendments to section 1 of the bill?

**Mrs McLeod:** I just want to raise the issue because this all falls around the whole question of whether or not you should have a psychiatrist in order to issue community treatment orders. I see the reference here is to "qualifications prescribed in the regulations." Is it considered that the regulations would specify that there has to be a psychiatrist issuing the treatment order and that would be what constitutes a legally qualified medical practitioner?

**Mr Brad Clark (Stoney Creek):** It would be a qualified physician or psychiatrist, as I understand it.

**Mrs McLeod:** So it will be "or" psychiatrist. One of the discussion points that we've had along the way was that there should be, at the very least, a psychiatric consultation before community treatment orders could be issued.

**Mr Clark:** I think the difficulty that we find ourselves in is the number of communities in northern Ontario that don't necessarily have a psychiatrist, and there are physicians who can also do the same duty but they have to be qualified in order to provide that care. So in terms of the

community treatment order, it would be a qualified physician or psychiatrist.

**Mrs McLeod:** Do you anticipate that the regulations would specify some specific training beyond the family practitioner's licence, some specific training in psychiatry?

**Mr Clark:** That was my understanding, yes.

**Ms Lankin:** One of the issues that I've raised on a number of occasions during the hearings was concern that the community treatment order provision was being supervised by a general practitioner. In this case now, a qualified practitioner with qualifications prescribed in the legislation need only determine that an individual has met the requirement for a referral to assessment, not necessarily met the requirement for involuntary admission. The concern rests in that section and we'll address it with the amendments there. But if the government is unwilling to address those amendments and to make a change there, saying that they have to meet the involuntary admission criteria, you leave us in a situation where an individual may not for some period of time have been seen by a qualified psychiatrist and/or have had any consideration given as to whether or not the community treatment order is in fact a less restrictive option to what else might be out there. So if the person doesn't meet the involuntary admission criteria, it's very hard to make a case that this is a less restrictive option.

I remain concerned and it's centred in two different sections of the act, and it depends on how they relate. Could you indicate whether or not you have any intention of accepting our amendment which would change the wording under the community treatment criteria, which references that they have met the criteria under subsection 15(1)?

**Mr Clark:** Which amendment was it?

**Ms Lankin:** It's a long way in. I believe it's number 42: as opposed to "having met the criteria for the completion of an application for psychiatric assessment under subsection 15(1) or (1.1)," substituting "having met the criteria for involuntary admission under section 20(1.1)." It was clear in the documents that I supplied to the government last week that we would be recommending that kind of a change.

**Mr Clark:** Your question is with specific regard to involuntary admission?

**Ms Lankin:** Yes, because that helps give some shape to what we're doing, whether it's just a qualified practitioner under the regulations or whether it's a psychiatrist who has to be involved in the issuing of a community treatment order.

**Mr Clark:** Would you not think that restricting CTO criteria to involuntary admissions would exclude patients who meet the committal criteria but agree to voluntary admission?

**Ms Lankin:** No. Right now the bill as it's currently drafted doesn't require that an individual even meet involuntary committal criteria, simply that they meet the criteria to be referred for an assessment. This change would insist that in the opinion of the physician—in this

case you're now defining who that physician can be—they would meet the involuntary admission criteria.

**Mr Clark:** So they have to meet the involuntary committal criteria, but an individual dealing with their physician voluntarily wouldn't meet the requirements for a CTO, based on what you're suggesting. Is that what you're saying?

**Ms Lankin:** I don't understand your question. No one would stop anyone dealing with a doctor voluntarily entering into any kind of agreement that they wanted to.

**Mr Clark:** The difficulty with substituting "involuntary admission"—in my mind what I'm trying to wrestle with is when you have someone who has voluntary admissions previously. I'm having some difficulty really understanding what you're trying to suggest here; I really am. Can you help me out, Lyn?

**Mrs McLeod:** When that amendment comes, we'll want to discuss it as well, but I'm not sure you want to get into that debate now. I think the concern is that as this amendment that we're considering right now is written, there's no guarantee that somebody who is being issued a community treatment order would actually have the psychiatric examination by a psychiatrist. I think what Frances is suggesting is, if you have a history of involuntary admissions, then you would have had a psychiatric examination. But as this is written, and if you can get a community treatment order with only voluntary admissions, which is currently the way the bill is written, then potentially you could be under an order without having had a psychiatric exam.

**Ms Lankin:** If you need, Brad, I can make the case at greater length when we get to that section.

**Mr Clark:** Why don't we do that.

**Ms Lankin:** I'm simply trying to understand what your intentions were, whether you had reviewed the submissions that were made and what you were going to do with that to help give me guidance with respect to this section and what is being proposed here.

**Mr Richard Patten (Ottawa Centre):** I'm not sure what it is, but it's symbolic that in calling the bill Brian's Law, Mr Arenburg's assessment was represented by a person who was not a psychiatrist, and this was even in a psychiatric facility. So you could imagine, if people get a little nervous in places where you don't even have psychiatrists, the importance of training. I think we need to clarify that. It would seem to me that, surely to God, in a psychiatric facility it's a psychiatrist who is trained to do these and it is not a general practitioner—nothing personal about the general practitioner. Obviously, in this particular instance they have some training. But you can see the reaction to this just in that instance—and that's now—to a new category of custody to a medium-security arrangement. It's a highly serious forensic case.

**Mr Clark:** Can I ask a question of legal staff? Under the Mental Health Act currently, Gilbert, can general practitioners and physicians not act currently?

1700

**Mr Gilbert Sharpe:** There has never been any obligation that there be a psychiatrist, because of the concerns



about remote areas of the province. You'd have people who met the criteria who then would not be committable. Issues, though, of the voluntary admission question that was raised just now—anyone, of course, who is admitted to a facility, even as a voluntary patient, would still have had a psychiatric assessment at some point, because the Mental Health Act requires that psychiatrists be in charge of the facility and be available. So there would be the psychiatric expertise that they would have had available to them at some point in their admission, whether voluntary or involuntary.

**Ms Lankin:** The last thing I would ever want to do is get into a debate with Gilbert—something I've never done in my life. Actually, that's not true, is it? I guess we've done it a few times.

Coming back to this, however, we have a situation where, when you put all the criteria cumulatively together, you're looking at someone who has had past admissions to the hospital—I argue that they should be involuntary, not voluntary, but currently under the proposed language of the bill they're voluntary admissions to hospital—over a period of time extending back three years. It could be a considerable period of time since the last time the person had any contact with the psychiatric facility and/or a psychiatrist. You have a regime where a physician—and you have not in the legislation told us what the qualifications are going to be; it's not clear that the ministry at this point in time knows what qualifications and/or training will be acceptable. That physician is going to again meet a whole lot of criteria, but one of them being a finding that the individual patient meets the criteria, in the opinion of the doctor, to be sent for an assessment only. That's the evidentiary-based stuff; it's not the actual assessment.

So it is not correct, in my humble view—as it always is—to imply that an individual would have necessarily had recent assessment and/or support and/or treatment from a psychiatrist. For all of what we've talked about in terms of the patient population that this is supposed to be designed to help, to intercede on their part and keep them in a less restrictive, more supportive setting than a psychiatric facility, it is beyond me how we can create a regime where there isn't a contact with a psychiatric assessment of some sort created, or at least a finding by a physician, specially trained, as you're suggesting, but the person would meet those criteria if a psychiatrist saw them. It's a threshold question for me. There's just too big a gap from what the law says and what we heard is intended.

**Mr Sharpe:** Mr Chair, if I could respond briefly, Mr Clark asked the question about what the act currently says. Of course, it says any physician, without any stipulation as to the criteria or special qualifications, any GP, could commit and make decisions under the statute. What's being proposed is that there will be very special and limited criteria.

I realize they're not available now to demonstrate what the regulation would appear like, but in concert with OPA and other experts there will be criteria

developed that would create a very special rule to make sure that the qualifications, although not strictly speaking those of a qualified psychiatrist—that these folks would be very well qualified, much better qualified than the average GP who makes decisions now under the act. I think that was the intention.

**Ms Lankin:** If I may, if you're suggesting, then, that the GP—in reality, most GPs in this province who aren't related to a psychiatric facility don't make decisions about committals. They make decisions about referrals for assessment, but not committals, in real practice, in real life out there. But we're going to have better-trained folks, and that will get worked out.

If you're saying they are capable of making a decision about committal, then what I put to you is when we get to that section of the act, that should be the criteria; it's incumbent upon them to believe that the person meets that criteria, as opposed to simply the evidentiary criteria for referral for assessment.

But all of that is because they're related; we're not quite at that section. I guess I can leave it to reiterate then, but I'll ask you to consider, in conjunction with what you're doing now, to set out qualifications and training, that there's an even stronger case that these doctors should be able to make that assessment.

**Mrs McLeod:** I just wanted to note, because I think it's going to come up frequently so I might as well note it at the beginning—and I will keep noting it—a number of places where we still have some lingering questions and concerns about how this will actually work and what some of the risks are in undertaking something new. I would feel much more comfortable with some of the ambiguity around it, which I think is inevitable at this point, if the review process were built in. I stress the fact that we're talking about a review process and not a sunset clause. I understand there was, I guess understandably, a negative reaction to the idea of a sunset clause. It's not intended to see this act disappear at the end of two years, but I do think a review is important, to examine who is issuing orders, for example. I just make the point now that a lot of our concerns could be at least addressed by saying that we'll review the whole thing in two years and see how it has worked.

**The Chair:** I remind the committee members that technically speaking we don't even have a motion before us, but I didn't want to truncate debate, given the rules. We're not under a time allocation motion. You're going to get your points on the record one way or another. Given that amendment 1 was withdrawn and will be renumbered as 3A, that would take us to amendment 2. Mr Patten or Ms McLeod, do you wish to actually get something on the record so we can debate that?

**Mrs McLeod:** Just briefly, I think the committee members are aware that this was a recommendation—

**The Chair:** Excuse me, you have to read it into the record first.

**Mrs McLeod:** I'm sorry. I'm so used to getting to the point where all we can do is vote.



I move that section 1 of the bill be amended by adding the following subsection:

“(4.1) The definition of ‘mental disorder’ in subsection 1(1) of the act is repealed and the following substituted:

“‘mental disorder’ means a disorder of thought, perception, feelings or behaviour that seriously impairs a person’s judgment, capacity to recognize reality, ability to associate with others or ability to meet the ordinary demands of life, in respect of which treatment is advisable.”

I recognize that this does amend the act. It’s a recommendation which was brought to us by the Ontario Hospital Association, the Ontario Medical Association and the Ontario Psychiatric Association, all with identical wording. I believe it’s an important clarification of what the Mental Health Act is about. As the wording is presently contained in the Mental Health Act—this is the first time the act has been opened in over 20 years so I think it’s appropriate that we look at something as significant as this—I really think the definition is so broad that it implies, for example, somebody with a developmental or learning disability, potentially. I think we want to make it very clear that this act is intended to deal with people who have a serious mental illness that needs to be addressed.

**Ms Lankin:** You will notice that the next amendment from the New Democratic Party is virtually identical, except for a couple of words in a bracketed add-on. I have no idea why they are there, to tell you the truth. So I am supportive of the Liberal motion and will, if this is passed, withdraw our motion.

I think much of what we heard during the discussions, both from those who are absolutely supportive of moving to a broader involuntary committal criteria and the creation of a system of community treatment orders, and from those who are opposed to those two things, was an agreement that who the government intended it to apply to—both the general provisions of the Mental Health Act and the specific new provisions that are being introduced—are people with serious mental disorders. In particular—and later on in the legislation for the community treatment orders we have more specific language to deal with—there are suggestions that we should look at clinical narrowing. I think this section, because it applies to the whole act and not just the community treatment order act, is appropriate in the wording that is here, that we not go further and try to do the clinical narrowing per se in this section.

This language does exist, for example, in Saskatchewan. In fact, this is word for word from the Saskatchewan law. That is law that has been pointed to often by the government in support of the measures that are being introduced in other parts of the bill. I think it has had support from people, and it’s been noted by Ms McLeod during the committee presentations. There are others who heard those presentations and who have indicated in the discussions that they are in agreement with that. So we would put forward our intent at this point in time to support this motion.

1710

**Mr Clark:** We don’t support the amending of the definition. It actually came about through the hearings here. I think it was the OPA that was in here and they stated that they were no longer pursuing the change of the definition.

The difficulty we have in the definition that’s being proposed is that there are mentally ill people who may be a danger and have a mental illness but they’re not treatable—for example, a psychopath. How would they fall into the definition that’s being proposed?

**Mrs McLeod:** You’re saying a psychopath could be caught in this definition or would be excluded in this definition?

**Mr Clark:** Would be excluded. That was one of the concerns that was raised by the OPA.

**Mrs McLeod:** Obviously, my concern is in the original act where the definition of “mental disorder” is “any disease or disability of the mind.” I think we’ve advanced in our understanding of mental illness beyond that in the last 25 years. There is no ulterior motive here. I don’t see this as in any way challenging the balance of the act. If that’s a concern—and I’m not sure a psychopath is treatable under this anyway—I would be happy to accept—

**Mr Clark:** It’s one issue that we raised.

**Mrs McLeod:** I’d be pleased to entertain, with my colleague’s approval, a friendly amendment that would strike “in respect of which treatment is advisable,” just to get a narrowing of the definition, or to hold the vote on this amendment until the government has a chance to look at that.

**Mr Clark:** Can I ask, Gilbert, did you follow up with the OPA when they stated they were no longer pursuing the change in the definition?

**Mrs McLeod:** I did ask, I think it was the OMA, whether or not they were still supportive of that and they said yes, they were. They just hadn’t pursued it in their presentation.

**Mr Sharpe:** It’s an advance in the definition. You’re right, the old definition of “disease or disability of the mind” does go back a long way.

As a lawyer, I was involved years ago in trying to amend the McNaughton test in the Criminal Code for insanity. I was impressed at that time that any time you make even a word change and you get into jurisprudence, you’re never really sure what the impact is going to be. The concern that this definition may or may not capture the full breadth of folks who are now committable—I don’t believe that the way our system operates, there’s abuse in looking particularly at the “disability of the mind” side. Even without the part that refers to treatment, there has been concern expressed in some quarters about the rest of the definition and whether or not it would capture the full breadth of folks who are committed today to hospitals for quite appropriate reasons, with review board sanctions and courts and so on.

I believe the primary concern was that we don’t know for certain what road we’re going down. Recognize that



other jurisdictions, other provinces, have embarked on this as well. But as part of the amendment to the act that's looking just at the community treatment order side of it, this would be more properly the subject matter of a complete overhaul of the Mental Health Act itself and how a new definition, the triggering point, would apply to the rest of the act as a whole. I believe that was the thinking.

**Mrs McLeod:** Mr Chair, I wouldn't want to argue with Gilbert either, but in all honesty, if we take out "in respect of which treatment is advisable"—I hear what Mr Clark is saying in terms of, what does that exclude, I appreciate that—but if then you have "a disorder of thought, perception, feelings or behaviour that seriously impairs a person's judgment, capacity to recognize reality ... or ability to meet the ordinary demands of life," it's hard to imagine who you would be excluding with that definition, apart from somebody, for example, with a developmental disability or somebody with a learning disability, which is a disability of the mind, but who certainly are not the intent of any part of the Mental Health Act.

**Mr Sharpe:** Again, for what it's worth, over the years I've been part of discussions about the dual diagnosis category of individuals—you're right—those with a developmental handicap and a mental illness.

**Mrs McLeod:** There are two diagnoses there.

**Mr Sharpe:** I think you're right, there is that other dimension. I'm not suggesting that the act any longer is targeted at the developmentally handicapped, by any means, but might that be a category that, where dangerous, those folks would not be committable because, as we know, the Developmental Services Act does not have detention powers in it?

**Mrs McLeod:** If you're talking about dual diagnosis, they also have a psychiatric diagnosis, so they would fall under this definition for all purposes of the act, because of the dual diagnosis itself. The second part of the diagnosis wouldn't count towards that, nor should it, but the psychiatric assessment diagnosis would.

**Mr Sharpe:** I understand what you're saying, and I understand the debate. I think it's just a matter of, in the time that was given to develop the amendments aimed at community treatment orders, the impact of developing a new standard, a new test for mental disorder, was not fully pursued. This, again in the context of an overhaul of the Mental Health Act itself, in my experience dealing at the federal level with the insanity laws, is a much, much bigger task to do.

The sense was that we've got to—

**Mrs McLeod:** I won't be here 25 years from now.

**Mr Sharpe:** I think the sense was that, in fairness, the test has stood for a long, long time, and should we be tampering with it now when we're really seeking to do something quite limited to the legislation?

**Mr Clark:** In fairness also, when the OMA and the OPA came out with this definition early on in my consultations when I was dealing with the next steps, it wasn't included as a part of the document that we were

asking people to comment on. As I was touring the province, asking for comments on a number of changes that we were proposing to the Mental Health Act, I did not ask for comments on the change to the definition of "mental disorder" under the Mental Health Act.

I do have concerns from that standpoint, that there hasn't been consultation on it. I would rather err on the side of caution and not amend that particular section at this particular time.

**The Chair:** Any further debate? Seeing none, I'll put the question.

All those in favour of Ms McLeod's motion? Opposed? The amendment is defeated.

Ms Lankin, with the exception of the clause and the French definition at the end, the wording for amendment 3 in our packet is identical.

**Ms Lankin:** Yes, it is.

**The Chair:** I'll rule that one is out of order, which takes us back to the former amendment 1, now re-numbered amendment 3A in your packet.

**Mr Clark:** It looks like subsection 1(5.1)—am I reading that correctly?—or section 5.1. They've got me all over the place here.

I move that section 1 of the bill be amended by adding the following subsection:

"(5.1) The definition of 'physician' in subsection 1(1) of the act is repealed and the following substituted:

"'physician' means a legally qualified medical practitioner and, when referring to a community treatment order, means a legally qualified medical practitioner who meets the qualifications prescribed in the regulations for the issuing or renewing of a community treatment order. ('médecin')"

**The Chair:** Debate? Seeing none, all those in favour of the amendment? Opposed?

The amendment carries.

Mr Patten or Ms McLeod.

**Mrs McLeod:** This is an amendment that follows a recommendation of the Canadian Mental Health Association. They were concerned that there was not a provision—

**The Chair:** Again, Ms McLeod, sorry; we have to read it.

**Mrs McLeod:** I move that section 1 of the bill be amended by adding the following subsection:

"(7.1) Subsection 1(1) of the act is amended by adding the following definitions:

"'qualified health practitioner' means, when referring to a community treatment plan, a legally qualified health practitioner who meets the qualifications prescribed in the regulations for providing services as a qualified health practitioner under a community treatment plan;

"'qualified service provider' means, when referring to a community treatment plan, a service provider who meets the qualifications prescribed in the regulations for providing services as a qualified service provider under a community treatment plan."

Just to follow up with a discussion, if I may, this follows on a recommendation by the Canadian Mental



Health Association, recognizing the fact that we have specified "qualified physician" and will define that further under the regulations, based on the amendment we just passed, that the same should be taken into consideration for other health practitioners and service providers, and that the qualifications would in fact be set out in regulations.

There was a concern that with the breadth of the community treatment plans, there could be unqualified health practitioners and service providers involved in care and treatment, and that would not be appropriate.

1720

**Mr Clark:** We don't support the amendment. The concern we have about it is you're identifying "qualified health practitioner." This in essence takes us back to where we were with the previous motion, "qualified family physician" or "physician."

Perhaps I need more from you, Lyn—sorry to do this to you. The second section, "qualified service provider": Can you enlighten me a little bit more, please?

**Mrs McLeod:** In terms of the breadth of a community treatment plan, there will be a number of people involved in providing service, either as health practitioners or service providers. I think it's no different than having regulations that will set out the qualifications for a physician who can act under this act—that there should also be regulatory provision for who qualifies as health practitioners or service providers. I just again go back to the Canadian Mental Health Association, who acknowledged that they don't have a specific suggestion as to the qualifications that should be provided; that's more appropriately determined by the professional regulatory bodies:

"The bill allows regulations to be passed in respect of governing community treatment orders, including the qualifications of those who issue orders, but there's no obligation to develop those standards.

"It's important that people who are seriously mentally ill receive appropriate treatment from knowledgeable care providers. Inappropriate medication or failure to provide"—this gets more into the physician issue. So it's really just an extension of the physician qualifications to further define under regulations any health providers or service providers who might be involved in community treatments.

**Ms Lankin:** Mr Clark, I think later on in the legislation you have specific references to regulated health professionals, and that is the language that we normally are accustomed to with respect to those professions. As I understand the proposal that Ms McLeod has put forward—and I'm supportive of it—it's to indicate that even within the regulated health professions, similar to within the practice of medicine and the qualified doctor, there are expectations of the type of training people will have to give this particular clientele and the particular structure of community treatment plans. I think it's trying build the most supportive group of people out there.

With respect to service providers, there are currently no regulations out there that detail qualifications, at least. There are certainly ethical standards, there are organizational expectations, there are accountability measures if they're part of a transfer agency, so there certainly are some other mechanisms out there, but again, nothing to apply a test of whether or not they are appropriate to the regime that we're asking them to take part in.

Similar to what you have done for the issue of a medical practitioner indicating that there will be a current set of criteria described in legislation that we have expectations that we're going to meet, other aspects of the community treatment plan rests in the hands of various people up there.

I would point out to you that in the community treatment order section, as I've just gone through that set of amendments, there are a large number of amendments from the government which change the language from "treatment" to "treatment or care and supervision." That implies, in and of itself—we'll talk about that when we get there in discussion; I have questions about that—the range and variety of people who would be involved in a comprehensive community-based treatment plan, and that it's not simply medical treatment. So I think some of these physicians, while it might take them a while to get through the regulations that would be applicable, can be very important safeguards to help make this an effective, comprehensive community program.

**Mr Clark:** Can I ask, through clarification, also about "qualified health practitioner" and "qualified service provider"? I know what I'm talking about when we're talking about a physician or a psychiatrist. Who are you talking about as qualified health practitioners? Who are they?

**Mr Patten:** They could be nurses, they could be social workers.

**Ms Lankin:** My assumption is that these health practitioners are people who come under the Regulated Health Professions Act, and we're saying that for the purpose of this legislation they meet the qualifications prescribed. For all others who are not regulated health professionals, I believe the service provider provision is intended to apply to them.

**Mrs McLeod:** Just to follow up on that, if we think of supportive housing settings as being a component of a community treatment plan for some individuals, the people who are providing support in that setting would not necessarily be health providers—they likely wouldn't be health providers—but would be service providers.

**Mr Clark:** A question to legal counsel: Gilbert, how does the Regulated Health Professions Act deal with this situation that we're talking about right now?

**Mr Sharpe:** The RHPA of course sets the basic standards and criteria for licensure by regulatory colleges for each of the professions. So they would initially determine whether or not an individual applicant met the criteria to be a nurse, a doctor or whatever, and then would, through its committee complaints process and so on, determine whether or not they maintain the standards



of practice in their profession. That would simply be an identification of basic qualifications to practise the profession. It wouldn't really necessarily have any direct bearing on whether they were qualified under any particular statute to take on measures that might go beyond the general qualifications required to practise.

For example, in the situation where the government has dealt with a physician and said, "If you're going to be involved in community treatment orders, one must hold special qualifications set out in the regulations for the very limited purpose of those community treatment orders because they have certain consequences and implications for individuals, special criteria are going to be established." It's then a bit of a step to say, are we going to establish special qualifications for all of those health practitioners and others involved in caring and treating persons involved in community treatment orders? Arguably, if you're going to do that, then you should take the next step and do it for all of those patients who are under the Mental Health Act, not just for those under community treatment orders.

The intent of the government in proposing the limitation on physicians who issue community treatment orders as being subject to special qualifications was simply because that is a new, important accountability obligation that was being assumed. It's just those physicians who are taking on that responsibility for whom the government would ultimately set qualifications. But, as I say, I think it is quite a stretch to say we're now going to look at adopting qualifications for all of those health professionals and service providers who are involved in the mental health system under the legislation.

**Mr Clark:** Are qualified service providers under any act?

**Mr Sharpe:** No. As far as I know, the important legislation is the health practitioner reference, and that's the Regulated Health Professions Act. Whether there's any specific legislation regulating others who are not health professionals—there is some legislation now for social workers and there may be some legislation for others, but I don't know of anything as comprehensive as the RHPA. If there were, again I think it would be basic meeting-the-qualifications-type legislation.

**Mr Clark:** Can I make a suggestion that we stand this one down? I need some clarification on the qualified service provider because I can't find something that it matches to. It's not clicking in. If we can leave this until Wednesday, then I can check a few things out and come back on Wednesday.

**Mrs McLeod:** I would certainly be happy with that. I think the concern that underlies this is that it may be a challenge to define the qualifications, although clearly this is not directive because it's open to whatever regulations the government thinks are appropriate. I don't think you need to make the stretch to say that therefore you would have to extend this to everybody. It might be a good idea, but I don't think this necessitates it because we are dealing with, as I've said over and over again, 5% of the population of people with serious mental illness to

whom the broad act would apply. Because this is involuntary still—I recognize the element of consent, but it's not necessarily the consent of the individual—there does need to be a particular sensitivity to know how to deal with these people if the community treatment order itself is going to actually be effective. One of the concerns that was expressed by a number of groups was that the community treatment order may deter people from seeking care, that it may be seen to be coercive, it may create a lack of trust. I think that's why there's a need for real sensitivity on the part of anybody who is involved in care, treatment or supervision of an individual under that community treatment order. It's broad enough to give the government the chance to say what's actually workable here, but still draws attention to the need to be really careful about who interacts with these very sensitive individuals.

1730

**Ms Lankin:** I also agree with the suggestion to stand this down to Wednesday. I just want to make a suggestion that if the government finds its way to supporting this, we may want to just do a little rewording. I would offer, I hope as a helpful suggestion, that in referring to "qualified health practitioner" it would be helpful to make reference to the existing terminology of "regulated health professional," thus, "'qualified regulated health professional' means, when referring to a community treatment plan, a member of a regulated health profession other than a physician who meets the qualifications prescribed in the regulations...." This accords it both with the RHPA as well as with the clause that you've just passed with respect to physician.

I urge you in particular to take a look at the issue of service provider. It's the very fact that there is nothing out there which regulates that section or sets out a structure that lends credibility to the argument Mrs McLeod has put forward that for this very sensitive project to try and make successful the implementation of community treatment orders, we should have some mechanism of testing an individual's qualifications against some expectations that we have.

**The Chair:** Do we have agreement to defer this till Wednesday? Thank you.

Further amendments to section 1, Mr Clark.

**Mr Clark:** I move that the definition of "rights adviser" in subsection 1(1) of the Mental Health Act, as set out in subsection 1(8) of the bill, be struck out and the following substituted:

"'rights adviser' means a person, or a member of a category of persons, qualified to perform the functions of a rights adviser under this act and designated by a psychiatric facility, the minister or by the regulations to perform those functions but does not include,

"(a) a person involved in the direct clinical care of the person to whom the rights advice is to be given, or

"(b) a person providing treatment or care and supervision under a community treatment plan." My French is terrible.

**The Chair:** "Conseiller en matière de droits."



**Mr Clark:** Merci beaucoup.

**The Chair:** I'm advised you don't need to read the French in future.

Did you wish to comment on that?

**Mr Clark:** We've discussed this at length through the committee hearings a number of times. I feel it just tightens things up a little bit for us.

**Ms Lankin:** Committee members may note that this motion on page 5 and the Liberal motion on page 7 and the NDP motion on page 8 are all very similar. One of the things that's contained in Ms McLeod's motion is the concept of a person who is certified in accordance with regulations. It comes back again to the arguments that have just been made. One of the things we have to recognize as health care changes is where in fact it is performed. As we move out into the community in new and different ways, some of the mechanisms and safeguards that have been put in place in facilities-based or institutional-based or hospital-based don't always follow easily out into the community. In the past, the concept of rights advice was something that was primarily hospital-based. We had mechanisms through the Psychiatric Patient Advocate Office and through other developments over time within the Ministry of Health to ensure that there was a pool of trained, qualified people to provide that kind of rights advice.

We're now talking about moving out into a community. I'll reiterate briefly the comment I was making about a physician, not necessarily a psychiatrist, out in a community who sees someone who doesn't necessarily have an immediate past relationship with a psychiatric facility and sets them on an order for a community treatment plan. That section's full of references to the individual having access to rights advice. The availability of that rights advice and the quality of that rights advice really needs to be a concern.

The language that is proposed in the amendment that is actually before us talks about a person who is "qualified to perform the functions," and the minister sets out the regulations or sets out who is qualified to perform those functions. What's not set out is the nature of the qualifications, and that's what we've done with "physician." I'm assuming that the language in Ms McLeod's motion, which talks about being "certified, in accordance with the regulations," presumes that the qualifications actually have to be set out in regulations. Although we're all trying to get to the same place, there is a difference in the way these two are worded.

My question, Mr Clark, would be, is the government amenable to not simply having those people who are deemed qualified to be set out in regulation, but the expectations of what qualifications they're going to meet being set out in regulations, and/or do you feel that the amendment you've put forward already achieves that?

**Mr Clark:** I was under the impression, and I could be wrong, that the qualifications for the rights adviser are already set out by regulation, are they not?

**Ms Lankin:** That's a good question.

**Mr Clark:** Someone who's an expert?

**Ms Diana Schell:** I believe they are. They're set out in, I think, the Mental Health Act. Just bear with me a moment.

**Ms Lankin:** It's one of the things that we haven't had time from receiving these amendments at 2 o'clock today till now to be able to look at. This is the point I was trying to make earlier.

**Ms Schell:** I'm not sure if everybody has a copy of the Mental Health Act with them, but section 14 of regulation 741, under the heading "Designation of Rights Advisers," if I could take you down to subsection (5), it says:

"14(5) Only persons who meet the following requirements may be designated by a psychiatric facility to perform the functions of a rights adviser under the act in the facility." Then it goes on to say:

"1. The person must be knowledgeable about the rights to apply to the board provided under the act and the Health Care Consent Act, 1996.

"2. The person must be knowledgeable about the workings of the board, how to contact the board and how to make applications to the board.

"3. The person must be knowledgeable about how to obtain legal services.

"4. The person must have the communication skills necessary to perform effectively the functions of a rights adviser under the act."

If I might draw your attention to the current definition of "rights adviser," I believe it only flags in the statute that the person has to be designated. It doesn't specifically say, I don't think at least, that they have to be qualified.

**Mr Patten:** It says they must meet "the following requirements set out under regulation 741," and then it lists, "must be knowledgeable about the rights to apply to the board" and all that sort of thing.

**Ms Schell:** That's in the regulations, sir, but the statutory provision says, "'rights adviser' means a person, or a member of a category of persons, designated by a psychiatric facility or by the minister to perform the functions of a rights adviser under this act," and then it goes on to say it doesn't include a person involved in the patient's direct clinical care. What I'm trying to point out as a matter of law is that the statute doesn't flag the requirement to meet the qualifications. There's a lot of reg-making power about that, but the definition of rights adviser doesn't set that out. So that's added to the present government motion that Mr Clark has introduced, along with paragraph (c) that excludes people involved in the implementation of a CTO from the rights advisers.

**Ms Lankin:** Diana, could you help me understand? You're suggesting that the language as proposed here draws a closer connection between the rights adviser, their qualifications and those functions set out in regulations?

1740

**Ms Schell:** What I'm saying is that it specifically requires that the person must be qualified by the regulations, where the definition presently doesn't say



that. It would flag up front that the people appointed by psychiatric facilities, and when the regulations are in place in respect of CTOs, have to meet the qualifications for the regulation. The fact that there are regulations that set out the qualifications would suggest that's the case, but in fact I think the problem we heard being addressed was a concern that facilities don't necessarily always meet the regulatory requirements in their appointments.

**Mrs McLeod:** I guess my concern with the definition is that the qualifications are set out but there's no test of how you've met the qualifications. I won't pretend to have made up the amendment that we've proposed; it's an amendment that was proposed by the Psychiatric Patient Advocate Office. I don't know whether there is some form of certification that would provide a test of those qualifications that you've just read out, but it seems to me that if there isn't, that's a significant gap, that the qualifications are set out but there's nobody to determine whether the person meets the qualifications. I think as you've read it out, just listening to it—and I didn't reference it in the original act—it doesn't sound as though even that set of qualifications necessarily transfers to the application of a community treatment order because it's specifically a psychiatric facility. There might not be a psychiatric facility involved in a CTO.

**Ms Schell:** That's quite correct, Mrs McLeod, but I think the point is that the legislation we have now is facility-based and we do have to put in regulations that will address this problem. I don't know that it makes much difference to say "certified" or "qualified," although since I don't really understand the certification concept, I'd have some difficulty with that.

**Mrs McLeod:** I appreciate that. I'm wondering if the government would consider a friendly amendment to its own amendment, so that it would be "qualified under regulations," because there's no indication here, your amendment doesn't refer to anything except "qualified to perform the functions of a rights adviser under this act," but there's actually nothing in the act that sets out those qualifications for community treatment orders. Secondly, there is no regulation we're aware of that sets a test for the qualifications.

**Ms Lankin:** Could I ask a technical question just before we proceed, Mr Clark? Regulation 741 in the explanation by rights advisers, the definition that's set out there in terms of the—I guess it's not the right section, but the qualifications or the functions. Could you tell me what that regulation is subject to in terms of what section of the act itself?

**Ms Schell:** I'm sorry, which part? Are you referring to all of the rights—

**Ms Lankin:** Regulation 741, the section that you read out, which is part 13(6), I guess.

**Ms Schell:** The rights advice provisions under the Mental Health Act deal primarily with respect to providing rights advice for people who have been found incapable of treatment of a mental disorder in a psychiatric facility.

**Ms Lankin:** I'm just wondering if you could actually give me the section in the act so I can see what the wording is that creates the power to develop this regulation.

**Ms Schell:** You're looking for the regulatory authority for these rights advisers?

**Ms Lankin:** Yes.

**Ms Schell:** I think Ms Hopkins is providing that to you.

**Ms Lankin:** In fact, as I read this, the explanation you gave that there is nothing that dictated an individual had to meet these qualifications before they were being designated, what the regulation-making power says is that there's a regulation-making power "governing designations by psychiatric facilities or the minister of persons or categories of persons to perform the functions of a rights adviser under this act ... including"—and there are a number of things—" (iii) prescribing qualifications or requirements that a person must meet before he or she may be designated by a psychiatric facility and qualifications or requirements that a person must meet before he or she may be designated by the minister...." That section would still prevail in relationship to the amendment that you're proposing now.

**Ms Schell:** I agree with you, Ms Lankin. The only point I was making is that it's not flagged up front in the definition of "rights adviser." I think I was careful to say that and to say that there was regulation-making authority to set the qualifications.

**Ms Lankin:** That wasn't a critical comment; it was a question I was asking. Never mind, I got my answer. Thank you.

**Mr Clark:** Lyn has suggested, "'rights adviser' means a person, or a member of the category of persons, qualified under the regulation to perform the functions ... " Is that correct?

**Mrs McLeod:** This is an amendment ensuring that we can reference back to the regulations.

**Mr Clark:** We'd be willing to accept that. That's fine, a friendly amendment.

**Mrs McLeod:** I realize we can't go back and change basic definitions.

**Ms Lankin:** What is the difference between being qualified under the act and qualified under the regulations, in technical terms?

**Mr Clark:** It's both.

**Mrs McLeod:** Given the clarification that you read, it may not be necessary.

**Ms Lankin:** Yes, that's what I'm thinking. When it says under the act that now—

**Mrs McLeod:** Is that a quorum call?

**The Chair:** We have a 10-minute bell for a vote. If at all possible, we can just complete the debate on this item.

**Mrs McLeod:** Surely.

**The Chair:** Did I take from that, Ms McLeod—

**Ms Lankin:** I am more than comfortable in proceeding with the government amendment the way it is, but I defer to Mrs McLeod and her concern.

**Mrs McLeod:** If the reference that was just offered satisfies counsel that it does reference the regulations. Could I just ask why it's still designated by a psychiatric facility? Is it assumed that's the only route to qualify and therefore a psychiatric facility will continue to be the designator of rights advisers, and does this make it impossible to broaden that?

**Mr Clark:** No, it's opened up. It's "designated by the psychiatric facility, the minister or by the regulations." So it is broader.

**Mrs McLeod:** So, "or by the regulations." OK, I'm satisfied with that.

**Mr Clark:** As originally written then.

**The Chair:** Any further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment carries.

Just if I may, amendment 7 has been withdrawn.

**Mr Patten:** Yes.

**Ms Lankin:** I withdraw number 8.

**The Chair:** Thank you.

I think in respect of the fact that a vote has been called, the committee will recess until 3:30 next Wednesday for further consideration of clause-by-clause on Bill 68. Thank you all.

**Mr Patten:** May I ask, Mr Chair, if that precludes any other option, like squeezing other time in?

**The Chair:** Let's say that barring any other announcements or agreement by the three House leaders, we will return here at 3:30 on Wednesday.

*The committee adjourned at 1748.*











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## **Legislative Assembly of Ontario**

First Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Wednesday 14 June 2000

# **Journal des débats (Hansard)**

Mercredi 14 juin 2000

## **Standing committee on general government**

Brian's Law (Mental Health  
Legislative Reform), 2000

## **Comité permanent des affaires gouvernementales**

Loi Brian de 2000  
sur la réforme législative  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 14 June 2000

Mercredi 14 juin 2000

*The committee met at 1004 in room 228.*BRIAN'S LAW (MENTAL HEALTH  
LEGISLATIVE REFORM), 2000LOI BRIAN DE 2000  
SUR LA RÉFORME LÉGISLATIVE  
CONCERNANT LA SANTÉ MENTALE

Consideration of Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996 / Projet de loi 68, Loi à la mémoire de Brian Smith modifiant la Loi sur la santé mentale et la Loi de 1996 sur le consentement aux soins de santé.

**The Chair (Mr Steve Gilchrist):** Good morning. I will call the committee to order. This is the continuation of clause-by-clause hearings on Bill 68, An Act, in memory of Brian Smith, to amend the Mental Health Act and the Health Care Consent Act, 1996.

When we left off, you will recall we had deferred one motion and we had completed some others subsequent. I would start off by asking the committee if you would like to go back to amendment number 4?

**Mr Richard Patten (Ottawa Centre):** We left off at number 8, did we not?

**The Chair:** We had deferred amendment number 4.

**Mr Patten:** Is there a way that we can periodically remind ourselves that if our goal is to finish by 6, to proportion our time somewhat in light of that?

**The Chair:** We'll certainly make an effort to do that, Mr Patten.

Ms Lankin, I think you had actually—one of the opposition parties had asked for the deferral in the first place.

**Ms Frances Lankin (Beaches-East York):** I believe it was actually Ms McLeod. I supported her in that, but it was Ms McLeod who asked for the matter to be set down.

**The Chair:** I would leave it up to the committee if you want to—

**Ms Lankin:** Could you please reference which amendment—

**The Chair:** That was amendment number 4 in your packet.

**Ms Lankin:** Thank you.

**The Chair:** Subsection 1(7.1). Is the committee prepared to resume the debate on that clause, having had

an opportunity now to review? Are you prepared to proceed with amendment number 4, Mr Clark?

**Mr Brad Clark (Stoney Creek):** In terms of discussing that particular motion, if I may separate two areas to start off with, so that we have a better understanding.

The first section deals with “qualified health practitioner.” A qualified health practitioner is a health practitioner as defined in the Health Care Consent Act itself. It's our view that that particular clause in this amendment is redundant. It has already been dealt with in terms of a definition under the Health Care Consent Act.

The second concern that I have is the fact that “service provider” appears in four different acts, and the concern we have is how it would apply, what the definition is for a service provider, and to what extent and expanse we deal with “service provider.” At this particular point in time, it's the government's position that the first section we've already dealt with under the Health Care Consent Act, and the second section we can't support because “service provider” really does not refer back to any specific act.

**Ms Diana Schell:** If I might just add as well, the definition of “health practitioner” is brought into the bill in section 1(4), and all of the people listed as health practitioners are regulated health professionals who have duties and responsibilities under the Regulated Health Professions Act and then profession-specific legislation.

**Ms Lankin:** I think you miss the point. Qualified health practitioner—and I made the reference on Monday when we met that we could be more particular if we wanted to refer to regulated health professionals, but you've already made that tie-in in the definition section, indicating that it means the same as in the Health Care Consent Act. What this particular clause attempts to do is indicate, as for medical practitioners, when referring to a community treatment plan, that there would be a prescribed list of qualifications above and beyond what consists within the Regulated Health Professions Act. It's like a subspecialty; the kinds of expectations government has of the people who will be involved in dealing with this very particular and small and most seriously mentally ill population that we keep hearing are the group that will be subject to community treatment orders.

Similarly, with qualified service provider, there is no legislated regime called “service provider.” I think we're all aware of that. But through this, we refer to the service providers who are going to be party to, and have

obligations under, the community treatment order provision. So again, this an opportunity to set in place a structure where, through regulation, you can list your expectations as a kind of experience or qualifications or criteria to make someone eligible to be an individual who can be party to planning, signing on, agreeing to and having obligations under a community treatment order.

1010

I don't disagree with anything you've said in terms of your response about qualified health practitioners or qualified service providers and what they mean. The point that was being raised was, when referring to a community treatment plan, giving a set of expectations to regulations of what qualifications those people would have.

**Ms Schell:** If I might just add, we do have regulatory authority in the bill. I take your point that it can be done through regulation, and that's what we would plan to do.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** I think the concern has been thoroughly stated over the course of the last day, and with Ms Lankin's comments today. I think it's important to note for the record that there are a lot of areas in the introduction of community treatment orders where there are going to be concerns about the readiness of the community to actually provide the treatment and support, and particularly whether or not the community is equipped to provide the kind of treatment and support that will be needed by people who are under involuntary commitment orders. If consent is given by substitute decision-makers, I think there's going to have to be a lot of work done in terms of the training of the health professionals, as well as any other service providers and caregivers, as to the sensitivity of the population and the way in which the interactions with this group of people have to take place. I think it's much broader, actually, than the health practitioners and the service providers who are identified in the proposed amendment.

I think it goes right through to the nature of supportive housing. I met yesterday with the chairs of boards that provide supportive housing for those with mental illness. Thank God they're there, because they set qualifications themselves. They set standards themselves in the absence of any government standards or ability to ensure that a particular quality of service is being met.

We spoke during the hearings—and others spoke—about the onus of responsibility on government. I believe the onus is now on government to ensure that there is a quality of standards in the provision of community treatment, both with regard to this very sensitive population and indeed with regard to all those with mental illness. If there is a particular strength of this portion of the bill, to me, it's holding the government accountable to develop the regulatory framework that will ensure there is a quality of service delivery here.

With that, Mr Chair, I'm content to pass the rest of the debate.

**Mr Patten:** I'd just like to make a comment. I buy the idea that the health care group is covered, but I believe that the ACT teams right now—and I think there are

about 40 in place at the moment around Ontario—have set up a mechanism where they are reviewing their particular response, given their anticipation that community treatment orders will come to pass, and what their response would be and how ready they are for this etc.

I guess the term "treatment plan" will be a generic term because while there will be treatment—that will take different forms—presumably there will also be other things that are not technically treatment. They will be service providers. In other words, I'm thinking of counsellors. I'm thinking of agencies that have a whole battery of volunteers who will spend some time and go shopping with an individual, or take him to the movies or whatever. If we're saying that anybody in that plan has to have some kind of accountability, then the only opportunity for including everybody, in my opinion, is to have, in support of Lyn's comments, some kind of reference to some accredited, qualified, recognized agency; functions, counselling, whatever it is. But it's not medical. It's a non-medical support system that will be a part of and play an important role in the treatment plan itself.

**The Chair:** Any further debate? Seeing none, I'll put the question to the members.

**Ms Lankin:** Can we get a recorded vote, please?

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Barrett, Clark, Dunlop, Spina.

**The Chair:** The amendment is defeated.

That takes us now to amendment number 9 in your packet. Oh, forgive me. That's the end of section 1.

Shall section 1, as amended, carry? All those in favour? Opposed? Section 1, as amended, is carried.

Now, over to you, Mr Patten.

**Mr Patten:** Can I just comment on this?

**The Chair:** You have to read it into the record.

**Mr Patten:** I have to read the whole thing? There's a lot to read.

I move that the bill be amended by adding the following section:

"Applicable principles

"2. The following principles apply with respect to treatment under this act:

"1. Persons who suffer from a severe mental disorder should have access to the medical treatment that they require and it should be available as early in the course of their illness as possible.

"2. Treatment of these persons should occur in the least restrictive environment possible.

"3. Community treatment orders are intended to be used with respect to persons who experience a repeated cycle of involuntary admission to hospital, the stabilization of their condition while in hospital, their release



from hospital, a failure to continue to take their prescribed medication and a deterioration in their condition and subsequent involuntary readmission to hospital.

"4. A need for involuntary admission to hospital remains because of the reality of severe mental disorder.

"5. Persons who, in the absence of their own consent, require treatment for mental disorder do not need to be admitted to hospital in order to receive appropriate treatment."

My comment on this section is that it has to be seen in light of whether or not the government will accept the recommendations related to a sort of bill of rights, because if it were, some of these principles are transferable. But I would remind the committee that the function of this section was an attempt to address what we talked about for a preamble. We found that a preamble wasn't really going to work in this instance because we couldn't put a preamble to the whole act itself; we were dealing with amendments. So our drafter suggested that one other way to do that was to put in a purpose clause which gets at what you're trying to get at. What we were trying to get at was, could we be more descriptive about the target population that this bill would attempt to address?

In that light, we put forward some of these principles. Number 3 is really the heart of the whole thing. Some of the others could be transferred to a bill-of-rights list, if we were to move in that direction. I'll just make those comments and leave it at that.

**Mr Clark:** There are a number of the principles stated by Mr Patten and the Liberal Party that we agree with, and the intent makes sense. I understand that we are specifically dealing with mental health care itself, but the government is also in the process of developing a much more expansive bill of rights for patients, for the entire health care system, in which a number of these things will be addressed.

Further to that, there are a number of clauses in here that you've mentioned which are touched upon throughout the bill itself. As well, there are other amendments that are coming up that I think will address some of the concerns we have. What you're trying to deal with—and you stated it very articulately—is that originally we talked about the preamble itself. Now we're at the point where we recognize, because the preamble only attaches itself to Bill 68, when they finally compile all of those acts together in the new RSO for the Mental Health Act and the Health Care Consent Act, the preamble is lost. It won't appear anywhere. We recognize that also. For example, in section 33.1, there's a motion coming that will specifically deal with that issue in trying to narrow the definition. At this point, we understand the intent, but we don't support where we're headed right now in the amendment.

**Mrs McLeod:** My understanding is that the reason this is presented in this format is because it is an acceptable amendment to the act in terms of it being in a form which would be acceptable and possible legally. That's why it's not worded as a preamble. If that's the

case, I would be interested in knowing that specifically. The principles that Mr Patten set out here are simply the principles that have been stated as the reason for the act being brought in. There is nothing here that calls on a financial responsibility for government or precludes government's ability to regulate. I'm not sure I understand what the government's problem is.

**The Chair:** Do you wish to respond to that?

1020

**Ms Schell:** I don't know that I have much to add to what Mr Clark has said. He has indicated that there is a Blueprint commitment and a budget commitment to developing a patients' bill of rights. By putting this in this particular bill, it is specifically limited to the population dealt with under this legislation.

I believe Mr Clark was indicating that many of the items that are dealt with in this particular motion are dealt with substantively elsewhere in the act, and there are a number of other motions we have with respect to specifically addressing the concern that came up in the discussion about the preamble, which I believe was directed towards trying to articulate the limited application of the CTO rule. As we all know, there are a number of motions later in the package that deal with that issue perhaps a little more directly.

**Mrs McLeod:** Mr Chairman, we will talk about the bill of rights because it's the next proposed amendment and it is acknowledged as somewhat broader even than the principles statement.

I just want to come back to that. This is no longer a preamble if it is in order as an amendment to the bill. If the principles are totally consistent with the government's intent in bringing forward the act, there is value in stating separately a list of principles, just as I will argue on the next amendment that there is value in having a bill of rights specifically for those with mental illness. But in terms of treatment under this act, which is what these principles address, if they're consistent with the act, there is value in having them identified as principles.

There are huge issues out there about trust and coercion and intent, and a statement of principles like this would go a long way to saying to people, "This act is being put forward with a sincere attempt to provide the most appropriate treatment for people."

I still have some concerns, but as Mr Patten will tell you, I've become convinced in the course of the hearings both that the act can serve a purpose and that the government's intent, genuinely, is to provide better access to treatment for this group of people. I still have concerns about guarantees of funding and resources, but I believe the intent is there. All the principles do is specify what the government has stated its intent to be. I just have very real concerns, if the amendment is legally in order, because it's no longer a preamble, why there would be a problem with this.

**Mr Clark:** We have not disputed whether your amendment is in order or not in order. The government's position is pretty clear. We're in the process of putting together a comprehensive patients' bill of rights for the



Ministry of Health that deals with the entire health sector. It's not simply this act. So it's our viewpoint that we would rather deal with it under that bill of rights, everything together, as opposed to here. You may disagree vehemently with that, but it still doesn't change the position of the government that they have every intention of dealing with this matter but under a patients' bill of rights as we're developing it right now.

**Ms Lankin:** I hear you clearly, and you're right, we may disagree with you vehemently on this. Quite frankly, the intransigence on this matter and, as I understand, on some matters coming up which have been clear from the beginning are of particular importance to our caucus—issues like the mental health advocate's office, the listing of minimum services available in communities, which I understand the government is also refusing to support—significantly undermines my confidence in the intent that I've heard expressed.

I personally think that we could sit down and work out some better wording. I think the motion before us on pages 9 and 10, and the NDP motion on page 12, all attempt to arrive at the same point. The approach we have taken is to take the preamble or purpose clause with respect to community treatment orders and place it in section 33.1, which is similar to the approach the government is taking on that.

Similarly, the issue of treatment in the least restrictive environment possible, with respect to CTOs at least, we've moved that right into the criteria section, although I don't oppose it appearing here as well.

My concerns about the specific language on pages 9 and 10 of the amendments are references to community services, when I believe, if you look on page 12, we're talking about mental health services. So whether those services are provided in a facility or in the community, the same rights apply.

To say that you are working on a bill of rights, which may or may never come to fruition, continues for me to be the problem that I have and have had for a number of years, and even when I was resident in the ministry, in which I would suggest that mental health is the poor cousin of the health care system. It's overlooked largely. It doesn't get the same kind of attention in the media and therefore the same kind of political management attention that overcrowded hospital emergency rooms do or other kinds of problems like waiting lists for cardiac care or cancer care.

The type of polarized views in the community about this legislation and the direction that we are taking together as legislators here cannot be totally assuaged but can be addressed, can be acknowledged, if legislators take the step to try and assure people that their concerns have been heard and even though we are proceeding with a piece of legislation that contains a new regime of community treatment orders, to which there is a lot of objection out there, we are doing so in a way that is both respectful of their rights and understanding of the nature of concern of the potential for abuse.

These kinds of phrases that have been incorporated in the Liberal motions and in the NDP motions attempt to do that. They stand alone for this sector and this group of patients apart from any generalized bill of rights. At such time the government brings forward a bill of rights which you think is comprehensive and no longer requires this, you can include an amendment in that bill to repeal this section.

Community treatment orders are coming in now, broadened involuntary committal criteria are coming in now, and we should attempt to do some balancing in this legislation to address the concerns, the very legitimate concerns, that have been brought before us in no small numbers during these hearings.

If the government refuses to move on this and a couple of other areas that I've alluded to, I do seriously then question the intent of all of what you said. It's impossible for me to accept that you agree with the principles of what we're saying, you agree with the approach of what we're saying, but you're simply not going to put it in law. The protection for people is when it's in law.

**Mr Patten:** I just want to underline what Ms Lankin has said, that the function of it is a communicative function. We're looking at this legalistically now and we're saying, "Well, it's covered here, it's covered there, it's covered there." We have people, myself included, who have difficulty reading a legal document, wondering, "What the hell is all this about?" One of the intents I thought the committee said it had was to try and provide some focus. By the way, I'm not hung up on the wording. We could come back on it and agree on some different wordings on anything, except that I think we did say we wanted to assure people that we had a section in there that described—when we're talking about a preamble—the target population, period, that this would allay fears for people who were thinking about the big police sweeps and things of that nature, and that we would have a section. We were advised, "That's not going to work very well; we can do a purpose clause," so there was something of this nature here.

As we go through this process, what I think we may find, and where this may break down, is where there are people making the decisions who are not here at the table. I empathize with the government side, and members who have gone through the process I think are empathetic to certain pieces. You're being told, "No, we don't agree with this, we don't agree with that," because of people in the Premier's office or whatever, other people, and they're not part of the process. They don't have a sense of the subtleties, the spirit or the ethos of the nature of the debate and the range of concerns that are out there in the community.

I appeal to you to consider that. As Ms Lankin has said, and I'm sure Ms McLeod as well, if we want to take the three different pieces and put something more simply, that's fine with me. If you want to stand it down for a moment, that's fine with me. But I truly urge you to provide some focus for this. I understand this is to replace a preamble, that a preamble would no longer



have a purpose. What happens to the preamble we put in? Does that still stand as it is but only for this bill and nothing else?

1030

**Mr Clark:** Yes, the difficulty we have—not the government; all of us as parliamentarians—is that the Mental Health Act and the Health Care Consent Act are previous documents that have already been passed into law. We are now amending them.

A preamble to an act, if it's set up at the initial enactment of that particular statute or legislation, becomes a part of that act. However, if we amend the act at a later date through another bill in the Legislature, the preamble is no longer a part of the original act; it's simply a preamble to the intent of the new bill.

**Mr Patten:** I understand that.

**Mr Clark:** When you actually see the acts come out themselves and there's an RSO number on it, it's a compendium of all of the amendments to that act. So here is a new act, as it stands today. The preamble would no longer appear.

What we have tried to do, and it's unfortunate that Ms Lankin is starting to question the intent because my intent has not changed; neither has the—

**Ms Lankin:** Could I be clear? I'm not questioning your intent. It's the government's intent on this. It's the orders that are coming from outside this room that I object to, and I find it so frustrating.

**Mr Clark:** What I have tried to do is meet our intentions for the preamble in a number of amendments that are coming before this committee. Perhaps what I might suggest on this particular motion is that if we stand it down for the time being—that gives us an opportunity to move through a number of the other motions—and then come back to it we might have an opportunity to look at specific clauses in it that you feel still have not been addressed elsewhere, and that may give us an opportunity to bring it back in.

I'm committed to working through this process, and I have to state that with the number of amendments that are coming forth that have been catalysts from the opposition parties, we have improved the bill. So if there's agreement to standing it down, this particular one, then we can come back to it.

**The Chair:** Is it the concurrence of the committee we defer consideration of amendment 9? Seeing no dissent, it's deferred.

That takes us now to amendment number 10.

**Mrs McLeod:** I'll read this for the record, Mr Chair, but could I also suggest, with the indulgence of the committee in the interests of time, because the NDP motion that follows this one—I think number 11 is actually part of number 10, as our numbers go—is on a very similar issue, it might be helpful if I read mine, make a comment on it and then have Ms Lankin read hers and have the discussion on both together, to save time, because they're both bill-of-rights discussions. Is there a way to do that?

**The Chair:** We could do that, and you're asking to have the debate now, or do you want that deferred as well?

**Mrs McLeod:** I'm just suggesting that I read mine. I want to make one comment on it. It's very similar to the New Democrats' motion.

**The Chair:** Normally Ms Lankin would simply put her points rather than read her motion separately.

**Ms Lankin:** In this case, the motions have substantive enough differences, but what I suggest is that it actually is part of the discussion, that we just decided to stand down, that it would be helpful if Ms McLeod could read the motion, make a comment and stand it down, I would read mine, make a comment and stand it down, and that the three come back together for consideration as Mr Clark has indicated.

**The Chair:** That's fine.

**Mrs McLeod:** I move that the bill be amended by adding the following section:

"1.1 The act is amended by adding the following section:

"Patients' Bill of Rights

"6.1(1) The following rights apply to all persons:

"1. Persons who suffer from a mental disorder must have access to the medical treatment that they require and must have it as early in the course of their illness as possible.

"2. Treatment must be given in the least restrictive environment possible.

"3. A person receiving a community service has the right to be dealt with by the service provider in a courteous and respectful manner and to be free from mental, physical and financial abuse by the service provider.

"4. A person receiving a community service has the right to be dealt with by the service provider in a manner that respects the person's dignity and privacy and that promotes the person's autonomy.

"5. A person receiving a community service has the right to be dealt with by the service provider in a manner that recognizes the person's individuality and that is sensitive to and responds to the person's needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.

"6. A person receiving a community service has the right to information about the community service provided to him or her and to be told who will be providing the community service."

Just by way of a very brief comment, this is a bill of rights. It does go beyond the concept of principles. I believe it's important that we have a bill of rights in the Mental Health Act. I understand the government says that they are working on a comprehensive bill of rights. I would just say to Mr Clark that the argument that the government is working on a comprehensive bill of rights simply does not hold water as a reason for not considering a bill of rights in the Mental Health Act. There is already a bill of rights in the Long-Term Care Act. If you are bringing forward a comprehensive patients' bill of



rights that subsumes the bill of rights that's in the Long-Term Care Act as well as any bill of rights that would be in the Mental Health Act, I assume you will have to repeal any outstanding bills of rights and encompass them in your patients' bill of rights.

I find it hard to imagine that the patients' bill of rights will be so all-encompassing that it will take away the value of having a bill of rights specifically for long-term-care patients as it now exists, and therefore it's very appropriate to have a bill of rights specifically for people who need mental health treatment. If we're serious about the rights of patients, then we have to make sure that those rights apply no matter what setting they're being treated in, and it doesn't hurt to re-emphasize the rights in each of those separate acts.

I do want to make two comments. If we're looking at all of these together, on what are essentially our parts 2 to 6, I prefer Ms Lankin's motion to ours, because ours is limited to the community service. That was an error on our part and it should be broader than that, so I would certainly prefer the NDP wording on that.

One major difference with ours is the first part, and that is, "Persons who suffer from a mental disorder must have access to the medical treatment that they require and must have it as early in the course of their illness as possible." I recognize that that may be a problem for the government, because it does raise the accountability standard beyond the 5% of the population that this particular bill is addressing. I feel it's important to put it in, and the reason for that is the concerns we heard about the fact that the intensive need for treatment of people who are in this 5% who will be affected by the community treatment orders or involuntary commitment may cause a bumping, that they may take priority over the other 95% of people who need treatment for mental illness. Therefore, I think it's important to have a statement of rights or a statement of principle that there must be a concern to make treatment available as early as possible to all those who need treatment for mental illness and not exclusively to the 5% this particular bill targets. That's why I feel that this right in the overall Mental Health Act is an important one to state.

With that, I'm happy to defer my amendment until there can be some consideration of the whole issue of rights and principles.

**The Chair:** I think we have agreement—nods all around. Ms Lankin, if you'd like to put your amendment, we'll defer Ms McLeod's amendment.

**Ms Lankin:** I move that the bill be amended by adding the following section:

"1.1 The act is amended by adding the following section:

"Part 1.1

"Rights of persons receiving mental health services

"10.1 A person receiving mental health services has the following rights:

"1. The right to be dealt with by the service provider in a courteous and respectful manner and to be free from mental, physical and financial abuse by that person.

"2. The right to be dealt with by the service provider in a manner that respects the person's dignity and privacy and that promotes the person's autonomy.

"3. The right to be dealt with by the service provider in a manner that recognizes the person's individuality and that is sensitive to and responds to the person's needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.

"4. The right to information about the community services provided to him or her and to be told who will be providing the service.

"5. The right to timely treatment."

I have spoken already to the reasons I believe these sorts of principles and rights should be spelled out in the bill. I've already spoken to the reasons I reject the argument that a sometime-down-the-road comprehensive patients' bill of rights negates the need or the desirability of proceeding now.

I would like to speak to the specific language here and indicate that we've framed ours in respect of rights of a person receiving mental health services. As Ms McLeod has alluded to, that would cover individuals who are seeking services both in an institutional-facility-based setting or in the community. We believe that is important.

The concept that Ms McLeod referred to in section 1 of their amendment talking about people having access to medical treatment "as early in the course of their illness as possible"—which is something we agree with—we think we need an even broader protection; that is, the right to timely treatment at any given time in the course of someone's illness. That's one of the reasons I support standing these down and seeing if there is a way of working through the language, because I think we're all trying to get to the same place and there are some good ideas contained in all aspects of that.

At this point in time, I would ask for agreement to stand it down and include these in the discussion with the prior two amendments.

1040

**The Chair:** I think we have that agreement on the committee, so that amendment is stood down as well.

The next amendment will be the one on page 13. I am going to have to rule that the amendment is out of order. It amends a section of the Mental Health Act which was not originally opened up by Bill 68, and under our rules that would place that amendment out of order.

**Ms Lankin:** May I seek unanimous agreement for the committee to give consideration to this amendment?

**The Chair:** You may, indeed. Ms Lankin has asked for unanimous consent to allow us to open up the section that's spoken to under this amendment. Is there unanimous agreement?

**Ms Lankin:** Perhaps I could explain why, very briefly, in two sentences, so people know what I'm asking for before we put it to them.

Looking at the wording here, you'll see 11(1) repeats the paragraph that is in the existing legislation. It's only there because it has been renumbered. What is added here is a provision of right to timely treatment: "If a



person voluntarily seeks treatment for mental disorder, the person has a right to obtain that treatment in a timely manner.”

This is the provision of the bill with respect to hospitalization. One of the concerns with the broader criteria for involuntary committal is that there will not be sufficient resources and sufficient beds available and that people who attend at hospitals voluntarily seeking treatment will not be able to get that treatment. We heard it in the hearings. This is an attempt to try and address that concern.

**The Chair:** Ms Lankin has now given her rationale for the amendment. Is there unanimous consent? I'm sorry, Ms Lankin, there was not unanimous consent. However, you're up next on page 14.

Forgive me. Once again I'm getting ahead of myself.

Are there any amendments to section 2? Seeing none, shall section 2 carry? All those in favour? Carried.

Sorry, Ms Lankin. Now the amendment on page 14.

**Ms Lankin:** I move that clause 15(1)(f) of the Mental Health Act, as amended by subsection 3(1) of the bill, be struck out and the following substituted:

“(f) serious physical impairment of the person within three months.”

There are a number of like amendments that will come up over the course of our discussions here. This deals with a section of the bill that strikes out the word “imminent” in the criteria for ordering an assessment by a physician, a justice of the peace—a number of places in the act.

We heard significant testimony about how the word “imminent” had become a barrier to practitioners in the field acting in a manner that was consistent with the intent of the legislation. We also heard a number of people from a legal perspective come forward and say they couldn't understand that; that the language was clear and had been interpreted by the courts, and in fact “imminent” had been interpreted to mean three months and that that was pretty clear.

I scratched my head at that one, because in my everyday use of the language, the word “imminent” doesn't mean three months; it means imminent, that it's going to happen within seconds. So I am quite sympathetic to the argument that that word perhaps had taken on a different meaning than the intent of the legislators of the time, and certainly a different meaning than the interpretation of the courts in the everyday use of the language by practitioners out there. I understand why families and others have found it to be problematic.

It is clear that there was a significant attempt on the part of the government, through the education program that was being put on by the head of the review board, to give some clarity to people about various aspects of the existing law that were perceived as barriers, and one of the things that was attempted to be clarified was that from the legal standards and the court interpretation the word “imminent” really had a meaning of approximately three months. The point I have made previously and make again today is, I think we err if we try to correct a problem of something that was incorrectly interpreted out

there by giving no guidance at all. By taking the word “imminent” out and leaving it without any time reference at all, the ordinary, everyday interpretation will take shape out there as well.

If we have an intent of what we mean, can we not say it clearly? If the government has a view that three months is the incorrect time frame, then fine, I'm willing to have a discussion about that. I only chose three months because that is the evidence before this committee as to the legal and court interpretation of the word “imminent.”

With that, I'd be interested to hear Mr Clark's response on this, and perhaps would have further to say after that.

**Mr Clark:** One of the concerns I have on a personal level, and the government has also shared the same concern, is that the psychiatrists and general practitioners who are using the Mental Health Act and the Health Care Consent Act—using the acts that are before them—have stated to us that it is not a precise science to predict that something is going to happen within a certain time frame, that there's going to be, in this case, serious physical impairment of the person within three months.

I don't know of any psychiatrist who would come in here with any degree of certainty and be willing to state that's going to happen within that time frame, and that concerns me. They may feel there's a serious risk of serious physical impairment, they may feel there's a risk of hurting oneself or hurting others, but they don't know the time frame. You can't predict when it's going to happen.

We heard psychiatrists talk about suicide. You can't predict if it's going to happen, let alone when it's going to happen. But you feel there's a precursor, that it could happen, that there's sufficient cause, in their reasonable judgment, that there's a risk, and that's why they need to act.

I'm really reticent to put a time frame in. I think it actually puts us back to that same hoop again, “What is imminent?” So if we have three months in there, would the psychiatrist say, “Well, I'm not so sure it'll happen in three months, so I'm not going to touch it,” because it's going to happen, perhaps, in four months?

**Mr Patten:** I agree with 80% of your argument, except I would arrive at a different conclusion. The analysis was, of course, that “imminent” was interpreted to mean “immediate,” and someone said, “Well, he's not quite bad enough,” ignoring that the psychiatrist or the attending physician would still acknowledge there was a need for treatment. I think what this bill is attempting to do is move from strictly a danger arrangement to maximizing addressing the need for treatment regardless. In the bill we even talk about the earlier stages possible when you can help somebody. We know the likelihood of success will be far greater, as is true with any disorder or disease.

I have trouble with a particular time frame for a different reason, not “imminent” interpreted as “immediately.” If there is a debate and someone says, “Our facility is crowded, this person can kind of get by for a



while and I've got a three-month period to live within, therefore I'll look at a schedule down the line," knowing full well that that person needs treatment right now, I'd like an opinion, legally, as to whether that would carry some weight with that particular figure, because I feel it's stronger if you don't put a time frame on it but the accountability is on the psychiatrist to answer the question, "Did you, in your assessment, feel this person required treatment?" regardless of what the level is.

1050

**Ms Schell:** That is a problem that I think could very well materialize, along with many other problems, if psychiatrists and physicians working in psychiatric facilities were held to a standard that requires them to be so accurate in their predictions. I think the other point Mr Clark made, which is of great concern from a legal point of view—we heard a lot of information to the effect that the word "imminent" has caused a lot of confusion because it's imported into the other criteria. It would be my view that if we put three months in one criterion, it's going to call into question the interpretation of the other provisions in the act which we know have been interpreted by the courts and have withstood constitutional review up to the Court of Appeal. It's that level of doubt related to both how the term would be used and understood and also how a physician and psychiatrist would possibly cope when faced with this that, in my view, would be highly problematic.

**Ms Lankin:** If I may, that's the exact reason that there has to be specificity. I totally reject the argument that they may import this into another section of the act, which you then go on to say has withstood challenge up to the Supreme Court. It will continue to withstand challenge up to the Supreme Court. In fact, if it were imported into these—I'm sure you're talking about (d) and (e), "serious bodily harm to the person" or "serious bodily harm to another person"—it would broaden the scope of application of those areas, not narrow it in any way. It would have the opposite effect as having imported "imminent." Those are evidentiary levels that it appears that someone is going to cause serious bodily harm. I think any common person looking at it and interpreting it is going to think, "That's likely to happen in the near future." If you give it a three-month period, you're even extending and giving broader latitude to the psychiatric community, if you're right that that would be imported into those sections.

But coming back to (f), the section we're dealing with, "serious physical impairment of the person," let's remember the sections we're talking about here. We are broadening the criteria for involuntarily committing people, for taking away people's civil rights. We must be so careful of the way we do this. To leave something broadly open to interpretation and to the potential of abuse, that theoretically at some point in the future this person could become seriously physically impaired because of the disease and the traditional course of decline of an individual who has this disease—to me as a legislator it's untenable that we would leave it wide open.

Just to think back: Before you brought in this legislation, you sent out a representative from the review board to do an education program sponsored by the ministry in which you were defending the clarity of the legislation and the word "imminent" and explaining and educating people as to what it meant and taking the time to tell them that it meant three months. If that's what you meant as recently as six months ago, why are you not prepared to put it into the legislation now? Yes, it puts a higher standard of accountability on people in their decision-making. To simply say this is not a science and we can't predict—all these sections ask for doctors to give their opinion and to predict to a certain level. What we're asking here is that we also give some clarity to people so that there is a greater sense of protection from abuse of this.

I haven't heard anything that convinces me there is a down side in this. We have fixed the problem of the layperson's interpretation of "imminent," as it didn't accord with what the courts were deciding the legislation means. We're putting in something very specific, in terms of three months, which is what we have been told, and the ministry seems to support, has been the intent all along. Surely that gives greater clarity than leaving it wide open without any time reference at all.

**Mrs McLeod:** Just briefly, I share Ms Lankin's concerns about the potential coerciveness and potential abuse of any involuntary commitment. I guess I have a concern that putting a time frame around it doesn't lessen that significantly. I really believe the protections against misuse of this and against coercion have to be built into very stringent criteria and into rights protections as opposed to into a time frame.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Ms Lankin:** Recorded vote.

**The Chair:** Ms Lankin has asked for a recorded vote.

#### Ayes

Lankin.

#### Nays

Clark, Dunlop, McLeod, Patten, Spina, Wood.

**The Chair:** The amendment fails. Page 15, Ms Lankin.

**Ms Lankin:** I move that clause 15(1.1)(a) of the Mental Health Act, as set out in subsection 3(2) of the bill, be amended by striking out "or substantial mental or physical deterioration of the person or serious physical impairment of the person."

In the submission I made to Mr Clark and shared with the Liberal Party last week, I made it clear that this language and similar language that comes up in the next amendment—similar in its lack of clarity and its vagueness—gave me concern. Again, we're looking at trying to find the right way to capture those people who are at



risk of deteriorating in our communities and getting them the help they need in a timely fashion, and I'm very supportive of the attempt to do that. But the language that has been proposed—and I know it has been worked through with some representatives of the psychiatric community; I know it is also opposed by some others in the psychiatric community—is very vague in its construction.

Let me read that to you: "... or substantial mental or physical deterioration of the person or serious physical impairment of the person." The thought of this imprecise science, as we just heard the government refer to, determining what is a "substantial" mental or physical deterioration gives me great cause for concern about the potential for abuse. Again, we're dealing with a situation where we're looking at the criteria for which a person can be involuntarily committed, in which we can take away their rights as a citizen, hold them against their will and provide certain aspects of treatment against their will.

I'm not going to take a long time, because I suspect there won't be support for this, given that the government did not seek to find improvements in this language. I had suggested as an alternative that we talk about how to tighten up this language, and those discussions haven't taken place and there haven't been any proposals come forward, so the default position I was left in was to move the deletion of these clauses.

I want to place on the record my concern about the way the language has been drafted, the vagueness of it. I think that while that meets the needs and desires of certain representatives in the psychiatric community who have worked on this language, I am convinced by speaking to others that it sets open a grave potential for abuse in the use of the involuntary committal criteria. I urge people to consider carefully their continued support for that language, given the severity of the civil right and civil liberties issues involved in the amendments to this bill.

**Mr Patten:** I would certainly be prepared to look at supporting a change in anything—the words don't bother me; it's whether or not the intent is substantiated.

Given the lack of substitute phraseology or wording, I wouldn't support removing this, because I believe this is extending compassion from a situation where people were perceived only to be a danger to themselves and to others from a danger clause. We've heard much testimony about the stigma of just highlighting people who are violent and one thing or another—we had a lot of discussion on that—to acknowledging that we have a responsibility to help people who are not violent but are causing damage to themselves. In that sense, there's a danger in terms of their own personal health, and the longer there's a repetition of mental or physical deterioration—in other words, if people go through consecutive episodes—the damage that is done to that individual is irreparable. It is not that this can be recaptured or that you can go through 15 or 20 episodes and that'll be just fine. There may be some people who can still retain an

ability after that, and I'm aware of some factors, but we also know that there's continual brain damage that people are at high risk of experiencing. So, given no alternative wording for that, I would have to disagree with this.

1100

**Ms Lankin:** Just briefly in response, Mr Patten, I have to say that the section of the bill which contains this language has significant reference to the patient population group you are talking about. It's contained in language where we're talking about an individual who has previously received treatment for a mental disorder of an ongoing or recurring nature that when not treated is of a nature or quality that is likely to result in serious bodily harm to the person or another person, someone who has shown clinical improvement as a result of that treatment in the past, someone who is apparently suffering from the same mental disorder or someone whose personal history indicates that the mental disorder and the current mental disorder or physical condition is likely to cause harm. It is contained within a section that is, I think, intended to make the leap, as you said, from simply a danger or harm to public safety to one of treatment.

My concern is that we are also talking about involuntary committal for treatment. The fact that someone might well be described here and might need help, and in most cases might even be willing to seek that help in early stages and receive that help—in the end I think the person you describe gets captured under the community treatment order where they need a regime to help them maintain that treatment in the community so that the revolving-door cycle doesn't continue.

My concern is that where we are looking at removing civil liberties, we must be absolutely clear in the language we use and absolutely willing to take responsibility for defining the conditions under which it is appropriate to remove someone's civil liberties. I believe the wording here, while compassionate in reaching out to a group of people—in describing people who are the kind whose needs we would hope we have sufficient resources to meet in a timely fashion and to have sufficient intensive resources to intervene in their lives in a meaningful and helpful way—is not well enough defined and evidentiary based to withstand, in my view, the test of society taking away someone's civil liberties.

**Mrs McLeod:** Obviously this is the crux of the anguish many of us, maybe all of us, have in addressing this issue. I've heard the concerns, and I'm very sensitive to the concerns that have been brought forward in terms of the fears about both the way the act may be administered and the basic removal of civil liberties. I recall Mr Borovoy saying you can't limit civil liberties in any way, but I'm equally compelled by the testimony of the families who have said we have to move from the standard of dangerousness to a standard of care.

I really believe that even in the context of the other criteria for involuntary commitment, which have to be there and which add to the stringency of the determination that it's appropriate to have an involuntary



commitment, if we go to solely bodily harm to self or others, we are returning to a criterion of dangerousness rather than a standard of care.

I hope we can build enough protections throughout the bill to ensure that will only work in a way which is truly supportive of that individual, because it's only if that's the case that you could possibly condone any limitation on liberty to this extent.

I believe we have to support the intent of the act, which is to move from solely bodily dangerousness to something which I agree is more ambiguous in determination, which is why I think the other criteria have to be very stringent.

**The Chair:** All those in favour of the amendment? Opposed? The amendment is lost. Ms Lankin.

**Ms Lankin:** I move that clause 15(1.1)(c) of the Mental Health Act, as set out in subsection 3(2) of the bill, be amended by striking out "or from a mental disorder that is similar to the previous one."

I have just made many of the arguments for this amendment. I think that all I've said about vagueness, lack of clarity, standards of accountability and willingness for a clear definition on the part of legislators hold. This section of the bill that I'm seeking to have deleted is contained in a section where the doctors are examining someone and the physician comes to the opinion that the person is apparently suffering from the same mental disorder as the one for which he or she previously received treatment, and then the wording goes on "or from a mental disorder that is similar to a previous one."

Again, we're talking about a cumulative list of criteria in which someone becomes eligible for involuntary committal. You've heard the arguments around the need to move from a danger-based concept to a treatment-based concept that Mr Patten put forward very eloquently, on which I agree with him. I may not agree with the words that are used, but I agree with the intent.

Again here in this section, however, it seems that what we are doing is building the greatest amount of latitude for the imprecise science of psychiatry that we can. I cannot ignore the voices that came forward to tell us of their experiences in the psychiatric system and of the abuses that have taken place, many of them historically chronicled, and some of what happens in research and experimentation taking place today will be chronicled in the future. I have no doubt about that. I don't cast aspersions on the good intent of many individuals, but I do believe the words in the laws that we put in place that give power to people must be very clear.

In this situation, we are giving power to physicians in their diagnoses and in their assessment of an individual to place them involuntarily in a psychiatric institution. I believe the standard of medical diagnosis, as imprecise as it is in the psychiatric area, should at least withstand a test of apparently suffering from the same mental disorder as the one for which the person has been treated in the past—and this links back to many other clauses where the person has been treated—and treatment was successful. You've heard those other provisions.

Why we need to build in an additional protection for the psychiatric community beyond already the vagueness of the word "apparently" to say that it could be a mental disorder which is similar to one—in many cases that's impossible to diagnose or tell in any event. In many other cases, it could lead to a fully different course of action with respect to the type of treatment, the type of medication that is prescribed.

It seems to me that if we are saying the standard is that someone meets conditions of dangerousness or they meet conditions of extreme need of intervention of treatment, and we know that previous treatment for that mental disorder has been successful, and that if the person isn't treated, the nature of the quality of their life is likely to decline, then we should in this section be holding them to the same standard that it is at least apparently the same mental disorder.

**Mrs McLeod:** I support the amendment. I appreciate the fact that Ms Lankin has given it this careful attention. I would challenge the reasons for having the "similar to" in the legislation clinically, and I don't pretend to be a psychiatrist. My background is much more limited in terms of having been briefly a mental health professional, but I don't understand clinically how you can have something which is similar to. Recognizing a degree of imprecision perhaps, nevertheless a schizophrenic is not a manic depressive, and a manic depressive is not a psychopathic personality.

1110

I don't understand why you would include this kind of latitude as almost a catch-all, because this legislation isn't intended to be catch-all legislation. It's intended to be very narrowly targeted to the population that can be helped. Surely "the same as" has to be there as one of the protections. The value of that is lost as soon as you add the "similar to," because instead of narrowly defining the target population with "the same as," you've broadened it to be catch-all with "similar to." Clinically, I don't think it stands the test.

**Mr Patten:** I just wanted to underline that as well, given the other criteria, subsection (c). We had this discussion around "let alone apparently," which sounds like a fairly loose "well apparently." I'm told and advised that legally it has a bit more of a definitive connotation than what I may take it to mean.

I would likewise like to say that we're talking about people who have gone through a similar thing, and one thing I think you may find in the literature from psychiatric assessments is that there is very often a fingerprint pattern to continuing episodes. There is a similarity, almost a repeating of a similar pattern, behaviour, reaction to etc, acting out. But if you add the corollary of "from a mental disorder that is similar to the previous one," it opens up the worry that it's not the same thing. We may be talking about a completely different diagnosis than what has been applied to this particular individual before, so in that sense, not hearing any rebuttal to what this would do to enhance things other than open up things, I don't think it's necessary,



and the statement should stand on its own and finish with "for which he or she has previously received treatment."

**Mr Clark:** I'm not a psychiatrist, either, but we did have to rely on the input of the OMA and the OPA in the drafting of a number of different clauses. They have told us that the specific wording itself is meaningful in clinical terms. They have raised the issue with us that "similar to a mental disorder" is appropriate, because psychiatric diagnosis is not sufficiently precise or without dispute to allow practitioners to agree that a relapse with similar presenting symptoms is the identical illness for which a treatment was provided in the past. I'll pass it over to legal counsel perhaps to expand on why we did what we did in terms of the clause. Gilbert?

**Mr Gilbert Sharpe:** We actually started with "the same mental disorder." We then went to "apparently the same mental disorder." We talked to psychiatrists and they pointed out a number of things. First was the multiple diagnoses individual, that you might have someone who is hospitalized for one illness at one time and for something similar to, but not the same diagnosis, the next. They also were concerned that the diagnostic categories and the DSM-IV, if you look at that, it's somewhat different from the DSM-III, and the DSM-V, in turn, may be different again. Given this legislation is going to be around for a long time, what may be seen as a diagnosis today may change tomorrow. It might be similar to, but not the same. So it was advised that we'd better build more flexibility into it.

**Ms Lankin:** I appreciate that a certain section of the psychiatric profession that was involved in consultations recommended this. Again, in consulting other parts of the psychiatric profession, not all see the need for that particular additional flexibility. Having put the word "apparently" in, and given that these things also have common language interpretation, a mental disorder—embedded in language that talks about having received previous treatment, physical deterioration, showing clinical improvement from that treatment—surely the ability, or the willingness, of a doctor to either refer for assessment or actually sign committal papers is not going to hinge on the fact the DSM-V, whenever it comes out, has changed the name of the diagnosis or the understanding of it.

I realize why certain parts of the profession seek the greatest flexibility possible. I realize why those who are patients and who call themselves survivors of the system seek to have the greatest protection and clarity possible. These things do end up in the courts and do end up being challenged in the courts.

I think it is unreasonable to provide the kind of flexibility that allows someone to say: "Well, it was not only apparently the same, or even if it didn't meet that test, it's similar. Aren't they all similar?" That to me provides too great a flexibility in the pendulum swing striking balances here. It is interesting, the progression you went to, from "the same," to "apparently the same," to "apparently the same and similar to." I think you went one too far and I'd ask you to step back from that.

**The Chair:** Any further statements? Seeing none, I'll put the question.

**Ms Lankin:** A recorded vote, please.

### Ayes

Lankin, McLeod, Patten

### Nays

Clark, Dunlop, Spina, Wood

**The Chair:** The amendment is lost.

**Ms Lankin:** I move that clause 15(1.1)(d) of the Mental Health Act, as set out in subsection 3(2) of the bill, be amended by striking out "or is likely to suffer substantial mental or physical deterioration or serious physical impairment."

This and a number of similar amendments follow on the amendment two times ago which was defeated. We'll simply read it in the record and suggest that we move to a vote.

**The Chair:** Any further debate? Seeing none, I'll put the question.

All those in favour? Opposed? The amendment is lost.

Mr Clark.

**Mr Clark:** You're at number 18?

**The Chair:** Yes.

**Mr Clark:** My suggestion here is that we've got two motions that are identical, so we might stand down on 18 and refer to the NDP for 19.

**The Chair:** We won't stand it down; you simply don't move it. We'll move on to Ms Lankin.

**Ms Lankin:** This is a very generous attempt of Mr Clark to make me feel happy that I get at least one amendment passed today.

**Mr Clark:** I can't win.

**Ms Lankin:** No, I said it was very generous. I even said on the record that it was very generous.

I move that clause 15(1.1)(e) of the Mental Health Act, as set in subsection 3(2) of the bill, is amended by striking out "apparently."

Again, in my ever ongoing attempt to bring clarity to things here, this particular section is contained in the new criteria in the legislation for a physician to find that someone meets the criteria to be referred for a psychiatric assessment.

In clause 3(2)(e), the bill sets out that the person apparently, "is incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained."

The point I have made with respect to this is that health care practitioners, physicians in particular, must, under the Health Care Consent Act and the obligation of the duty for their position, make a determination every day whether or not someone is capable of consenting to treatment. It is part of the practice of medicine. They cannot provide treatment to an individual who has not



given informed and capable consent, without seeking that consent from a substitute decision-maker.

It seemed to me that adding the word “apparently” here was somehow broadening or lessening the requirement for a doctor to make a determination around capacity and that was inappropriate, and I think the government has agreed with that.

**The Chair:** Any further debate? Seeing none, I’ll put the question.

All those in favour of the amendment? Opposed? The amendment is carried.

Shall section 3, as amended, carry?

All those in favour? Opposed? Section 3, as amended, is carried.

1120

**Ms Lankin:** I move that clause 16(1)(f) of the Mental Health Act, as amended by subsection 4(1) of the bill, be struck out and the following substituted:

“(f) serious physical impairment of the person within three months.”

I’ve made the points with respect to this amendment under a previous amendment, so I just suggest that it could be put forward to a vote.

**The Chair:** Any further debate?

Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that subsection 16(1.1) of the Mental Health Act, as set out in subsection 4(2) of the bill, be struck out.

In four areas of the bill we introduce new criteria for consideration with respect to either conveying a person for a psychiatric assessment or committing a person. Those new criteria affect the work of physicians, in the first instance, who may make a referral for assessments; JPs who hear evidentiary-based affidavits or testimony from people seeking to have a person sent for psychiatric assessment; police officers who attend at a scene, and there have been some changes there; and then of course the psychiatric assessment itself and the criteria for actually committing someone.

In the case of physicians, justices of the peace and police officers, we’ve done a couple of things differently. For physicians and justices of the peace, we’ve introduced a new section—the relevant one here for JPs is subsection 16(1.1)—in which we look at the state of mental health and make projections about the person’s condition, the deterioration of that condition, the likely results of that, like serious physical impairment or mental or physical deterioration, the things that Mr Patten talked about in terms of bringing compassion in treatment into the consideration of the legislation.

My contention is that it is not within the professional competency of justices of the peace to make a determination on a range of these issues, about the likelihood of someone suffering from substantial mental deterioration or substantial physical deterioration in the future.

The interesting thing for me is that going before a JP is an opportunity for people to bring immediately evidence to suggest that someone is in fact a danger and someone is in fact going to need intervention to save

themselves from harm or save someone else from harm. A JP can, on the basis of an affidavit, make a determination on the basis of evidence. If someone credibly presents that an individual has threatened, has pulled a knife, has pulled a gun, has said certain words and threatened themselves or someone else, I think a decision can be made around that in the context of the legal system.

To ask a JP to base a decision on someone’s evidence that the person is likely to suffer significant or serious—sorry, the adjectives have gone at this point in time—mental deterioration, I think, is outside of the professional capacity of that individual. Surely it is within the capacity of the medical profession, and that’s where we should seek to ensure that a person is getting treatment, that a person is going to be conveyed for an assessment.

We don’t have this kind of language with respect to the police. We expect they will, on the basis of reasonable and probable grounds, come to a determination that there is a danger test that has been met and convey the individual to a hospital or a facility for an assessment.

I don’t believe that the JP is significantly different from the police officer in terms of the court system and the justice system. The individuals who should use these new criteria around the physical or mental deterioration of an individual giving rise to a cause for psychiatric assessment or a psychiatric involuntary committal should remain within the medical profession.

**Mr Patten:** I think it’s a good argument in terms of the difference between the police and the JP. Even if that section were not in there, the JP could follow through and it would require some sensitivity. But I think what it does do with the JP is put on the record something that can be contestable or is accountable, number one. Number two is, can I ask if there is any special training for JPs in terms of knowledge of this act and sensitivity to psychiatric conditions?

**Mr Sharpe:** Actually, when the act was amended years ago, in the late 1970s, we worked with the chief judge to run training sessions for the JPs in the different categories—A, B, C, D, whatever. Certainly in those days only ones who had some special training on mental health and process were permitted to do this. I don’t know what the current situation is with JPs; however, it’s our intention to target them, along with the police and others, in terms of their responsibilities and accountabilities under the act.

**Mr Patten:** I support leaving it in, frankly, because I don’t see it doing any harm. On the other hand, I appreciate Ms Lankin’s argument. For the police, at least they have a responsibility as peace officers for someone whose behaviour—whether it’s a nuisance, contravening the law, threatening others or whatever, they at least have that to fall back on. That’s why it’s not there for peace officers, because it’s not a medical assessment; it’s a behavioural one, dealing with their civil behaviour.

If this one, for example, were for JPs who had special training, then I think that would be very helpful and I



could support it even more. If it doesn't, then I would have to defer to Ms Lankin and say, why would you leave it in for another non-medical officer to participate in this when they don't have the training?

**Mr Clark:** Just a couple of things I'd like to put into the record: One is the difficulty families have in terms of access in rural areas, and perhaps even sometimes getting their loved one to a physician. Clearly they can articulate that there's a concern and they can present evidence which is sworn in before the JP, as I understand it, and the JP can then make a decision based on that. The concern I have is that, again, if you're sitting in a situation where a family can't get someone to a physician, or if you're sitting in a situation in a rural community, I think we should have that latitude. I hear what Ms Lankin is saying, but the JP is simply issuing an order for an examination, as I understand it. There are safeguards built into the system in terms of rights advice at that point also.

**Ms Lankin:** I just want to make sure it's clear on the record what we are talking about in terms of this particular section.

"Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice,

"(a) has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person; and

"(b) has shown clinical improvement as a result of the treatment,

and in addition based upon the information before him or her the justice of the peace has reasonable cause to believe that the person,

"(c) is apparently suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

"(d) given the person's history of mental disorder and current mental or physical condition, is likely to cause serious bodily harm to himself or herself or to another person or is likely to suffer substantial mental or physical deterioration or serious physical impairment; and

"(e) is apparently incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained,

"the justice of the peace may issue an order" for assessment.

1130

This is a new clause in addition to the standing clause that exists in the legislation which deals with bodily harm to oneself, to another person or serious physical impairment to the individual.

I still put forward that what we are asking a judge to make a decision on, based on reasonable cause to believe, is outside of the professional capacity of the individual. I

am very sympathetic to what Mr Clark says, that it is not always possible to get an individual to a doctor to have an assessment and have the doctor be able to make this determination. But surely, where a doctor isn't involved, it is then a more urgent state of condition that should allow us to invoke clauses of apprehending someone and taking them to a psychiatric facility.

I would even be somewhat placated on this if we had a provision that the family had to go to a doctor, had to prepare all the information for a doctor, and the doctor had to at least provide an opinion, not only from seeing the person, but based on what they've heard, that this being true they would issue a form 1 to convey someone; so that the JP has some advice from a medical professional who's been able to, with medical expertise, question the family and get an understanding of the individual's situation. The JP then, if they find the information sworn under oath to be credible, can put those two things together and move forward.

There's no such requirement for that kind of medical opinion even in absence of having seen the individual. So I won't argue it further, but I do believe we are stepping beyond what we can even produce specially trained justices of the peace for.

**Mrs McLeod:** Just briefly, before the amendment, I do think this is one of the areas where only the dangerousness should be the criteria for justice of the peace involvement, and that stands in the existing act.

**The Chair:** Further debate? Seeing none, I'll put the question.

All those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that clause 16(1.1)(a) of the Mental Health Act, as set out in subsection 4(2) of the bill, be amended by striking out "or substantial mental or physical deterioration of the person or serious physical impairment of the person."

My comments with respect to this are already on the record.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that clause 16(1.1)(d) of the Mental Health Act, as set out in subsection 4(2) of the bill, be amended by striking out "or is likely to suffer substantial mental or physical deterioration or serious physical impairment."

The same rationale; the wording here is slightly different than in the other sections, but it's really just syntax in the paragraph in which it appears. But my arguments remain the same.

**Mrs McLeod:** Just for clarification, we're dealing still with the section that is the appeal to the justices of the peace?

**Ms Lankin:** Yes, and if anything, the arguments I made around the vagueness and lack of clarity of the language are even stronger for me in this section, where you don't have a medical practitioner with the confidence



to make these determinations giving consideration to the matter before them.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

Shall section 4 carry? All those in favour? Opposed? Section 4 carries.

**Mr Clark:** I move that section 17 of the Mental Health Act, as set out in section 5 of the bill, be amended by striking out "in a manner that in a normal person would be disorderly" in the portion before clause (a) and substituting "in a disorderly manner."

This particular amendment came up through the process of the committee. The CMHA raised concerns about the terminology "in a normal person," and I believe it was the Liberal Party that also raised similar concerns. I think the amendment speaks for itself.

**The Chair:** Further debate? Seeing none, all those in favour of amendment? Opposed? The amendment is carried.

Shall section 5, as amended, carry? Carried.

Is there any amendment or debate on section 6? Seeing none, shall section 6 carry? Carried.

**Ms Lankin:** I move that clause 20(1.1)(a) of the Mental Health Act, as set out in subsection 7(2) of the bill, be amended by striking out "or substantial mental or physical deterioration of the person or serious physical impairment of the person." My comments are already on the record.

**The Chair:** Further debate? All those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that clause 20(1.1)(c) of the Mental Health Act, as set out in subsection 7(2) of the Bill, is amended by striking out "or from a mental disorder that is similar to the previous one."

I want to indicate that we are now talking about the section of the act where, following a comprehensive psychiatric assessment, a physician has arrived at a conclusion that the person meets the criteria for involuntary committal. The points that I made on the record before with respect to a physician who is giving consideration as to whether the person meets the criteria for being referred for a psychiatric assessment—that amendment was defeated at that time. But now we're talking about an individual who has been conveyed to a psychiatric hospital or the psychiatric wing of a general hospital, where there has been a full, probably 72-hour assessment done. Surely at that point in time, we can live by the standard that the psychiatrist or the physician involved has arrived at an opinion that the person is apparently suffering from the same mental disorder and that we don't need to provide this kind of flexibility.

I assume that my arguments will be no more successful this time than last, but I wanted to point out that we are, in my view, at a section of the act where there is need for even greater precision and higher standards of accountability for the professional decision-making involved.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that clause 20(1.1)(d) of the Mental Health Act, as set out in subsection 7(2) of the bill, be amended by striking out "or is likely to suffer substantial mental or physical deterioration or serious physical impairment." My previous remarks stand.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that subclause 20(5)(a)(iii) of the Mental Health Act, as amended by subsection 7(4) of the bill, be struck out and the following substituted:

"(iii) serious physical impairment of the person within three months."

This is the "imminent" versus "three month" debate that we've already had.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

Shall section 7 carry? Carried.

Mr Patten, Ms McLeod, the amendment on page 29 is out of order because section 23 was not part of Bill 68.

That takes us to—

**Mrs McLeod:** Just pro forma, may we ask for unanimous consent to consider opening this section of the bill?

**The Chair:** You certainly may ask.

**Ms Lankin:** Could you tell us what it is?

**Mrs McLeod:** It deals with the services in correctional facilities.

1140

**The Chair:** Is there unanimous consent to open up this section? Sorry, Ms McLeod; pro forma response to a pro forma question perhaps.

That takes us to page 30. Oh, I beg your pardon, it does not. It first prompts me to ask, shall section 8 carry? Carried.

That now takes Mr Clark to the amendment on page 30. Oh, I beg your pardon. I've got to be fair here, and we may get the same pro forma request and response, in that this section, as well, is out of order for the reasons given just a minute ago to the Liberal amendment.

**Mr Clark:** I ask for unanimous consent.

**Ms Lankin:** You've got nerve.

**The Chair:** Mr Clark has asked for unanimous consent to open up this section.

**Mr Clark:** The requirements for this particular amendment came to us from the OMA and the OPA. They asked for amendments regarding leave of absence provisions in the Mental Health Act to allow for a type of step down. We can get into more detail if we actually choose to debate it.

**Mrs McLeod:** The difficulty is that if we give unanimous consent, you're going to pass it with a majority, so this may be one where we need to have the debate before we give unanimous consent.

**The Chair:** I'll certainly entertain that if you wish to elaborate on your comments, Mr Clark.



**Mr Clark:** This is a situation where it deals specifically with the leave-of-absence provisions, as I understand it. I guess the difficulty here is that we're talking about a section but we haven't even read it into the record.

**The Chair:** That's right, that's correct. We allowed Ms Lankin the opportunity to speak to her proposed amendment before actually tabling it, so I think it's fair to offer you the same opportunity.

The written text is in front of each of the members if you wish to offer your rationale.

**Ms Lankin:** Could I ask a quick question? Just on reading, the existing act allows for a leave of absence where the intent is the person returns to the facility. This offers another option where the person has a three-month leave where it is not explicit that the intent is that they return to the facility. Is that it essentially? Is there anything more that this clause does beyond that?

**Ms Schell:** I'd be happy to speak to this. As Mr Clark has indicated, we were putting this forward in an attempt to respond to what we were hearing in the briefs of the OMA and the OPA and what the proposed amendment would do. Specifically, their concern was with respect to the requirement to return to the facility. If I've understood them correctly, they believe that created an artificial requirement when what this provision should be used to do would be to give a person a trial in the community to see how they would do; so that there'd be some middle ground between hospitalization and other kinds of management in the community.

In my own legal practice, the other thing I've heard about section 27 is that it doesn't seem to address the common situation in facilities where weekend passes or passes at Christmas would be the norm.

We have tried to address these issues in a number of ways, by, in subsection (1) of the proposed amendment, allowing for a pass, for a leave of absence given by the physician. But I just take you down to subsection 3. We didn't want that to be free-wheeling so that would be subject to terms and conditions set by the officer in charge of the facility.

**Ms Lankin:** I'm sorry to interrupt, but just to try and truncate this, as I look at the existing section and look at the amendment. Subsections (1), (3) and (4) are all not identical wording but the exact same intent of what is in the existing bill. What's new here is subsection (2), that there could be a leave without the explicit intent that the person return. Is that correct?

**Ms Schell:** That's correct, but I would just draw your attention to subsection (3). Presently in the act it just talks about the leave being subject to whatever terms and conditions the officer in charge sets. In order to make this, hopefully, a reasonable process, we've also put in that the attending physician would be subject. Otherwise, you're perfectly correct.

**Mr Patten:** I think it clarifies, because it now provides the option. We know the consent board in the past has turned down the use of that vehicle. If indeed it is a usage for a possible early test—the commitment is that

there's still a bed in the hospital for this individual in the facility—and that it is within a very specific time frame of three months, then I would support it. I think it would be helpful, whereas there is some contestation at the moment, I understand, about the use of section 27.

**Ms Lankin:** Just one more question. I'm inclined to give consent and actually to support this. One thing that does concern me is that the existing language makes it clear that the leave of absence be a "period of not more than three months." The change here indicates a "designated period," but not more than three months. It includes a weekend, a week, a month; it doesn't include six months. It seems to me that while it might be reasonable to have someone come back and to have this provision renewed, to have someone on some kind of never-ending probationary condition in release from hospital is a bit problematic. Could you explain the reason for doing away with the actual specified time frame of three months? That's not what I heard being brought forward from the profession. It was more the concern about the restriction of the language, that there's an intention that the patient return to the facility.

**Ms Schell:** I may be misunderstanding the question. I believe what the Mental Health Act presently says is "for a designated period of not more than three months." We were preserving that and only taking out the requirement that there be an intention that the person return. I know I'm not responding very well because, I'm sorry, I don't quite understand the question.

**Ms Lankin:** I'm looking at the language in the government motion: "The attending physician may, subject to subsection (3), place a patient on a leave of absence from the psychiatric facility for a designated period, if the intention is" for them to return. Subsection (2) is the same, "for a designated period of not more than three months," but it doesn't—

**Ms Schell:** You're referring to subsection (1)?

**Ms Lankin:** Yes, which is a change from the existing—

**Ms Schell:** I'm sorry, I was still preoccupied with subsection (2). You're quite right. What we're trying to capture with subsection (1) is this idea that a person can be permitted to have a pass for the weekend, for some family purpose or over a religious holiday. We're trying to include the idea that it's OK to allow people to have passes, which, as I understand it, is common practice in departments of psychiatry and in psychiatric facilities. The legislation doesn't presently directly address that and it causes some confusion in practice, as I understand it.

**Ms Lankin:** I'm sorry, the existing language is "of not more than three months." A weekend falls under that and, as you say, that's actually common practice.

**Ms Schell:** The difficulty, I think, is that in practice those decisions are made by clinical teams working directly with the patient rather than the chief executive officer of the facility. The current provision limits leaves of absence to those that are granted by the officer in charge. That has pretty serious practical implications when you're talking about an institution like the Toronto



General Hospital. That provision is typically not used for passes.

**Ms Lankin:** But, Diana, I understand the change to “the attending physician.” We did hear that, particularly from the hospital-based psychiatric departments. That’s where the decision is essentially made and it’s really bureaucratic to have to run up and get someone else’s signature. I’m questioning why in subsection (1) we’re dropping the reference to “of not more than three months.” My concern is that it is inappropriate, where the intent is explicitly under that section that someone return to the hospital, to have some kind of ongoing leash on someone six months or 12 months into the future. There needs to be a review and some finality to that. I just don’t understand the dropping of the three-month reference.

1150

**Ms Schell:** Under subsection (1) frankly we had not anticipated that it would be used for lengthy absences. We were thinking more in terms of weekends. Then you get into the debate of, are we talking about 48 hours or are we talking seven days? We didn’t anticipate three months. We thought the longer absences were more appropriately left with the officer in charge, but the day-to-day kind of ordering of time out of the institution was better left with the attending physician.

To cover off the concern about any possible abuse of this provision, we put in terms and conditions that would apply to the attending physician. The thinking around that was that it seemed unlikely that hospitals and their administrators would give free reign to their attending staff to have people out in the community, technically as patients but endlessly subject to some sort of leash.

**Ms Lankin:** I am not hugely hung up on this in terms of how it is going to be used out there. I see no need for the deletion of the words. The reference of “not more than three months” did not prohibit anyone from having a weekend pass, a special occasion pass or anything else. My concern when you change something without having thought it through is always the unintended consequences of it.

However, I think the rest of the provisions here, Mr Clark, are worth supporting and I would support your bringing them forward. You may want to take a moment yourself, once you get this on the record, to stand that down and come back this afternoon and give it some more thought as to whether you really want to change those words or not.

**Mr Clark:** Ms Lankin has raised a valid point. I don’t see any difficulties in adding “not more than three months” right after “for a designated period” in subsection 27(1) to make it consistent with subsection 27(2). I don’t see any difficulty with that.

**The Chair:** Let’s make our amendments after we actually have unanimous consent to bring this item on the floor. If we’ve at least been able to frame our opinions as to whether this merits unanimous approval, I put that question. Is there unanimous agreement to consider this amendment?

**Ms Lankin:** Agreed.

**The Chair:** Thank you. Mr Clark, you have proposed—

**Mr Clark:** It was Ms Lankin’s suggestion.

**Ms Lankin:** No, go ahead. Just put it forward. Why don’t you read it into the record with that?

**Mr Clark:** It’s just a question of adding, in subsection 27(1), after “for a designated period,” inserting “of not more than three months.”

**Ms Lankin:** Mr Clark, you actually have to read the whole thing into the record.

**Mr Clark:** I’m sorry.

**Ms Lankin:** Why don’t you read it in with that included?

**Mr Clark:** I forgot we hadn’t done that.

I move that the bill be amended by adding the following section:

“8.1 Section 27 of the act is repealed and the following substituted:

“Leave of absence

“27(1) The attending physician may, subject to subsection (3), place a patient on a leave of absence from the psychiatric facility”—

**The Chair:** Why don’t you read it in with your amendment in it?

**Mr Clark:** —“for a designated period of not more than three months if the intention is that the patient shall return to the facility.

“Same

“(2) The officer in charge may, upon the advice of the attending physician, place a patient on a leave of absence from the psychiatric facility for a designated period of not more than three months.

“Terms and conditions

“(3) The attending physician and the patient shall comply with such terms and conditions for the leave of absence as the officer in charge may prescribe.

“Exception

“(4) This section does not authorize the placing of a patient on a leave of absence where he or she is subject to detention otherwise than under this act.”

**The Chair:** Is there any further debate? Seeing none, I’ll put the question. All those in favour of the amendment? Contrary? The amendment carries.

Ms Lankin, you can probably consider that one and a half amendments you’ve gotten so far.

Page 31, Mr Clark.

**Mr Clark:** I move that subsection 28(1) of the Mental Health Act, as set out in section 9 of the bill, be amended by inserting “shall make reasonable attempts to return the person and” after “order for return.”

This is again something that came up during the hearings with the committee. The Liberals—I think it was Mr Patten, if I recall correctly—indicated that the police sometimes treat the authority as discretionary, and he may wish to further the comment. We had concerns about it also, and the amendment speaks for itself.

**Mr Patten:** I won’t prolong this except to say that this was based on some testimony during the hearings, and I support this. “Reasonable attempts,” I suppose, sounds



reasonable. I would hope it would be more than reasonable attempts, that they would make every attempt to return the person, but that it would not be ignored. I think this addresses that issue, so that's fine.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is carried.

Shall section 9, as amended, carry? Carried.

Are there any amendments to sections 10 or 11? Seeing none, I'll put the question. Shall sections 10 and 11 carry? Section 10 and 11 are each carried.

**Mr Clark:** I move that subsection 12(1) of the bill be struck out.

If I may, Mr Chair, this is basically a housekeeping amendment. Bill 68 seeks to make all administrative forms approved, which is an attempt to reduce the red tape involved in terms of the forms themselves. Forms that restrict a person's liberty should continue to be prescribed forms.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Shall section 12, as amended, carry? Carried.

Are there any amendments to section 13? Any debate? Seeing none, shall section 13 carry? Carried.

If I may, given the time on the clock and given that we are coming up to a section with a number of amendments, perhaps it's an appropriate time to call a recess. Just before I do, I want to make sure everyone knows that this afternoon we'll be meeting in committee room 1, so take your notes with you, please.

**Ms Lankin:** I think we are making good progress and we are all attempting to move things along here. Actually, having looked at the amendments, I recognize there are a number of substantive amendments to the community treatment order provisions and another set of substantive issues with respect to basket of services and mental health advocates that will be coming up. I wonder about our ability, with all goodwill, to complete these by 6 o'clock this evening. Given that we're on page 33 and there are 80-some-odd pages, I think it's going to be difficult. I'm wondering whether the committee Chair might want to give some consideration to discussion with the government House leader as to whether or not there is another time that the committee may meet. I know there are some significant restrictions on the parliamentary assistant, myself and Mr Patten from the Liberal Party with respect to availability and coordinating of schedules. We might need to make heroic efforts to meet the government's intention of getting this bill back into the House next week for third reading.

**The Chair:** I'll certainly make those inquiries. Thank you. With that, we stand recessed until 3:30 this afternoon.

*The committee recessed from 1159 to 1549 and met in committee room 1.*

**The Chair:** Good afternoon. I call the committee back to order. We will resume the clause-by-clause considera-

tion of Bill 68. Where we left off last was the government motion on page 33.

**Mr Clark:** Chair, if I may, on page 33: I would like to stand that down. We're trying to work on some amendments to the clause that might incorporate 9, 10 and 11 so that the preamble we're trying to deal with is actually built right into the clause. Ministry counsel is working on that, so I would like to stand 33 down.

**The Chair:** Is it the agreement of the committee that we stand it down? Thank you.

**Ms Lankin:** I agree, but I have a comment on that. The motion on page 36, an NDP motion, is significantly similar—I'm trying to quickly see what the difference might be; yes, there is a difference—to the government motion on page 33; that you took that into consideration.

**Mr Clark:** Do you want to stand that down too?

**The Chair:** Let's see if we get to it.

**Ms Lankin:** Just while you're doing this, asking if you would make sure that you're looking at that.

**The Chair:** That takes us now to the motion on page 34, a Liberal motion.

**Mr Patten:** I move,

(a) that subsection 33.1(1) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "a physician may issue or renew a community treatment order in the prescribed form" and substituting "a physician may enter into or renew a community treatment agreement in the prescribed form with the person", and

(b) that section 14 of the bill be amended by striking out "issue or renew a community treatment order" wherever it appears after subsection 33.1(1) of the act and substituting, in each case, "enter into or renew a community treatment agreement", and by making corresponding changes with respect to other grammatical forms of the expression "issue or renew a community treatment order."

I think we've had this discussion already. The explanation and discussion with witnesses during the hearings and the explanatory notes in the bill emphasized that this is a medical-consensual model. Given that the community treatment order has its historical roots in a legal framework—a court order, indeed—and that this is really a medical model, it would be more descriptive to use the term "community treatment agreement."

There are other benefits to doing that. Changing the term to "agreement" takes the edge off, and for those who may feel they may be caught up in one of these draconian orders, I think they may find some solace in the fact that you're talking about an agreement. If they imagine themselves being there, they might not necessarily agree, and therefore they had a role in the process.

The other thing is that if it sounds like a disposition of the court, it seems to me that it would be a strong point in being able to answer those who were worried about rights issues that indeed we've entered into an agreement here. Insofar as not all situations are with a substitute decision-maker, but indeed a patient may be the party who makes



the agreement, it truly is an agreement and therefore it would remain so.

My final comment is from Dr Elias when he was here. He said, "In my mind, CTOs should be issued only with respect to persons who lack the capacity to consent or withhold consent, as I already mentioned earlier. Making a CTO ... subject to the consent of the person who's the subject of the order is no order at all but rather an agreement."

**The Chair:** Further debate?

**Mr Clark:** When the consultations actually started initially and the next steps were under discussion, I myself at that time raised the issue of nomenclature. I had the same concerns about the terminology "community treatment order" and "community treatment agreement." There was support on both sides of the equation, and some didn't care what it was called because they were basically opposed to it, period.

We're now at the situation where, in discussions with some people from the SSO and some family members, the concern they have raised about it is that the community treatment agreement, for someone who has a substitute decision-maker making the decision on their behalf, doesn't seem to have the same weight, perhaps, and their fear is that it doesn't have the same weight with the patient they're trying to help.

The concern we have at that point in time is, does the terminology "community treatment order" take anything away from the actual act itself? No. Does the terminology "community treatment order" upset some people in the community? There's no doubt there are a few people who are upset about the terminology, but they're also upset about the legislation. Would the community treatment order help someone who is being placed with a community treatment order through the use of a substitute decision-maker? Would the terminology have more impression upon that patient versus "community treatment agreement"? At this point, the government would prefer to err on the side of caution and leave it as a CTO.

**Ms Lankin:** I have a couple of quick comments on this. I don't want to prolong it. It's clear where the government rests with respect to this. One of the things that concerned me about the possibility of changing the language to "agreement," although philosophically I'm in agreement with the position that has been put forward by the Liberal Party with respect to this amendment, is that when Dr Elias spoke about the fact that a CTO really should apply to someone who has been found incapable, I found that being the position I've held from the beginning. I have a difficult time believing that this is a consensual agreement-based process. I believe that in the vast majority of situations, given the criteria that have to be met, there's only a slim chance under those criteria that someone would in fact be found capable of entering into this as an agreement on their own. When a substitute decision-maker enters into the agreement on the person's behalf, there still is an element of the person therefore being ordered to participate in this. I felt that if we called

it an agreement, we would be in a way whitewashing the element of this legislation which is saying to people: "You've a pretty tough option here. You either go along with this and abide by the directions here or you're going to end up inside a psychiatric facility."

On the other hand, I think there is a strong argument to be made that if we could shift this to a system of an agreement-based approach, if we could build in some of the other amendments that we have talked about and have proposed, that would really create that kind of regime in a much more supportive way. It would be the better way to go. If this amendment were adopted, along with a number of the other amendments that have been put forward, I think we would have a better piece of legislation and a better mental health system and supportive, compassionate treatment system in the province.

I will vote in favour of the amendment, but it's a moot point because I've been given to believe that the other amendments that I think are complementary to this will also be defeated. I think in the end it would be unfortunate that we didn't take this step to address the concerns that have been raised.

**Mrs McLeod:** I also want to speak. I think the amendment is not only appropriate, but I think it is in order with what is already in the bill. I agree with Ms Lankin that I don't think this is very often going to be used with the consent of the individual. I think where that occurs, there will be truly an agreement that won't be under this act in terms of the treatment that will be provided. I think most of the consent is going to be through the substitute decision-maker, but that doesn't take away from the fact that the substitute decision-maker in this bill has to agree to the comprehensive treatment plan or the community treatment plan. It is not an agreement to an order in the sense of one specific. There has to be actually an agreement, and therefore I think the term "agreement" is much more appropriate and implies that there is some measure of control by that substitute decision-maker as to the adequacy of the plan that's put forward.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? All those opposed? The amendment is lost.

1600

**Ms Lankin:** I move that subsection 33.1(1) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "To provide a person with psychiatric treatment that is less restrictive to the person than being detained in a psychiatric facility."

Mr Chair, I intend to stand this down. I would like to make one brief comment to explain to people that this is amending subsection 31.1, which we have stood down and currently wording is being developed, taking into account a number of other proposals.

The intent of this one, however, you'll see by subsequent amendment, is to remove the concept of psychiatric treatment in the community being less restrictive to the person than being detained in a psychiatric facility from the preamble or purpose clause of the treatment commun-



ity order section and actually put it into the criteria for a community treatment order.

**The Chair:** Do we have agreement to stand down?

**Mrs McLeod:** Just one question.

*Failure of sound system.*

**Mrs McLeod:** In similar amendments, we've used the term "least restrictive," which was wording that was used in a number of submissions to the committee. I'm just wondering if I could ask, either from the government or from Ms Lankin or both, about their strength of feeling around "less restrictive" rather than "least restrictive," because I assume that's part of what's going into the draft.

**Ms Lankin:** I can answer from my perspective. I think the language you propose—"least restrictive," if it is a principle with respect to treatment in general, that the treatment offered is the least restrictive—is appropriate.

In this case, the criteria for a community treatment order, there are a number of positions. One of them currently set out in the purpose clause is that it's the purpose of the community treatment order to offer treatment in a setting that is less restrictive than the institutional setting.

**Mrs McLeod:** Specifically in comparison to a psychiatric institution.

**Ms Lankin:** My concern is that to give that meaning it needs to be not in a purpose clause but in one of the criteria, so that the person actually has the opportunity to challenge that and to say, for example, "This type of medication is more restrictive to me in my life than being in an institution." It's a challengeable aspect of the committal criteria.

**The Chair:** Did I understand earlier you're going to pursue the same approach with 36?

**Ms Lankin:** Yes, I would read it into the record and stand it down.

I move that subsection 33.1(1) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"Community treatment order

"33.1(1) To provide a person who suffers from severe mental illness such as schizophrenia with a comprehensive plan of community-based treatment that is less restrictive than being detained in a psychiatric facility, a physician may issue or renew a community treatment order in the prescribed form if the criteria set out in subsection (2) are met."

Again, the exact wording here is dependent on what happens with my earlier amendment and with the government's and the Liberal amendments. So I will stand this down.

**The Chair:** Number 37, Ms Lankin.

**Ms Lankin:** I move that section 33.1 of the Mental Health Act, as set out in section 14 of the bill, be amended by adding the following subsection:

"Less restrictive treatment

"(1.1) For the purpose of determining what constitutes less restrictive treatment under subsection (1) with respect to a person for whom a physician is considering

issuing or renewing a community treatment order under subsection (2), a physician shall have regard to the person's opinion as to what constitutes less restrictive treatment for him or her."

If I may, I ask to stand this down in light of our earlier discussion.

**The Chair:** Seeing no dissent, it's stood down.

Number 38.

**Ms Lankin:** I move that clause 33.1(2)(a) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "three-year period" in the portion before subclause (i) and substituting "two-year period."

Mr Chair, there are a number of amendments to specific clauses here that I will be addressing. If you will bear with me, let me get the actual language from the bill.

In 33.1(2), the language talks about physicians being able to "issue or renew a community treatment order under this section if ..." and in part (a) it's "during the previous three-year period the person,

"(i) has been a patient in a psychiatric facility on two or more separate occasions or for a cumulative period of 30 days or more during that three-year period, or

"(ii) has been the subject of a previous community treatment order under this section."

Then it goes on to a number of other criteria.

There actually appears to be one amendment missing here. The intent of this amendment is in both section 2(a): to reduce the three-year period to a two-year period; and in 2(a)(i): the reference to a person having been in a psychiatric facility on two or more separate occasions or for a cumulative period of 30 days or more during that two-year period. There should be consistency.

**The Chair:** We will find that on page 40, will we not?

**Ms Lankin:** Is it? OK. It's just out of order. Sorry.

Those two, you see, both come together. You'll also note that in a subsequent amendment we talk about making the occasion in a psychiatric facility as being "involuntary."

A couple of things are going on through this section. We want to reduce the period of what we were looking at in the past from three years to two years. We want to say that what counts towards the cumulative time period are involuntary committals. We think it is entirely inappropriate and will have a dampening effect on an individual's willingness to go and seek voluntary treatment if they know that the clock is starting to click from that day towards a potential utilization of that past experience towards supporting criteria for the issuance of a community treatment order.

I believe, though I'd need a moment to go through it, that there is also a reference to changing the cumulative period of 30 days.

In looking at the experience in other jurisdictions, there is mixed experience as to what standards are relied on. The Saskatchewan legislation, which has been much referred to by the government as a model for this, has the more restrictive, backward-looking time period and



cumulative experience that I am proposing we look at here in Ontario.

**The Chair:** Further debate?

**Mrs McLeod:** As Mr Clark and Ms Lankin will be aware, we had also proposed virtually an identical amendment. In subsequent discussions and in consideration of what our bottom line is and the art of the possible, perhaps, in the negotiation of this, we have dropped our amendment. Where we had looked for the two-year period rather than the three-year period, the 60 days rather than the 30 days, we've hung our hats on trying to get it as involuntary admissions, which was really a bottom line for us. Nevertheless, I support—as we did originally—the Saskatchewan recommendation.

One of the concerns I have had since we considered that was a statement that was made to the committee that it might be very difficult in Ontario, given the state of psychiatric beds, to actually accumulate 60 days.

**The Chair:** Further debate?

**Mr Clark:** To start off in terms of clarifying the record, I'm not sure the government has actually referred to Saskatchewan as the model that we based this on. We based it on the Manitoba model. Saskatchewan has come up in the hearings, however.

In the briefing that we had with the OMA and the OPA and in the discussions within the consultation itself in the broader sector, I didn't hear an overwhelming sense that we should be changing the time frame, the two years or three years. From the government's perspective on it, I'm not sure exactly what it adds to the bill as opposed to what it actually may take away from the patients in terms of the history. Three years versus two years: When you're dealing with someone who is seriously mentally ill, having a psychiatrist or a family physician who has an opportunity to look at three years worth of history is an important component, as opposed to limiting it to two years. I hear the concerns; we don't agree, however.

1610

**Ms Lankin:** If I may, nothing in this clause would prohibit a physician from looking at however long a history of medical involvement a patient has. The history for 10 years or more would be relevant to making a determination whether the patient met a number of other criteria in terms of the repetitive nature of the disorder, the treatability of the disorder, the success of the treatment of the disorder, a number of those other criteria that would come into effect.

Because we are dealing with a bill that purports, in very appropriate ways, to circumscribe people's civil liberties, we have to ensure that we are doing that in a way that is both consistent with the intent to get services and treatment to people who are hard to treat in an effective way, as well as to protect the rights of those individuals. How long do we need to look back? If we are talking about 5% of the population of people with mental disorders, those who are most seriously mentally ill, those who have a record of repeated institutionalization, with treatment by medication that's successful

and a record of going off that, it seems to me that history is clearly set out over a long period of time. The active period with which we can look to see whether the person is appropriate for a CTO at this point or not should be, I believe, circumscribed in terms of how far back in a person's history one can look. Other than the OPA and the OMA, I heard no generalized support for the longer period of time; not just the three years being longer, but the 15 days being a shorter, cumulative test, and the issue of the admissions having been voluntary versus involuntary. I didn't hear an overwhelming support for that, as you're saying you didn't hear an overwhelming problem with it during your consultations.

I put that forward. I think this is a balancing act, and to my way of thinking this reaches a better balance.

**Mr Clark:** It is a balancing act. As a matter of fact, we had the OPA and the OMA lobbying that we remove the need for hospitalization from it, period; that it shouldn't even be there. They had concerns about that. We are trying to do the balancing act. It's a question of the extent to which we do it in terms of timing. Again, I have to go back to all the rights advice that we've built into the system itself, into the act. We agree to disagree, I guess, at this point.

**The Chair:** Further debate? Seeing none, I'll put the question on Ms Lankin's motion. All those in favour? Opposed? The motion is lost.

A Liberal motion on—

**Mr Patten:** It's part of the same argument. The argument was, obviously, that if we're talking about two visits—I should read the motion, right?

**The Chair:** Could you read the motion?

**Mr Patten:** I move that subclause 33.1(2)(a)(i) of the Mental Health Act, as set out in section 14 of the bill, be amended by adding after "a patient in a psychiatric facility" in the first and second lines "involuntary basis."

This would not just mean a minimum of two or more separate visits to a facility, which I think would act as—did we lose our key decision-maker here?

**Mr Garfield Dunlop (Simcoe North):** Can we take a recess?

**Ms Lankin:** We can continue. He could give instructions, couldn't he?

**Mr Dunlop:** I'm just wondering if we can carry on. He's going to be back in a couple of minutes.

**Mrs McLeod:** We feel very strongly about the implications and we would really hope that the government would be prepared to consider it. I'm not sure that it can be considered in the absence of Mr Clark.

**The Chair:** If the committee's agreed, we'll take a two-minute recess.

**Mr Dunlop:** Better make it a five-minute recess.

**The Chair:** The committee stands recessed.

*The committee recessed from 1615 to 1618.*

**The Chair:** I will call the committee back to order. Mr Patten, I believe you were in the middle of your explanation.



**Mr Patten:** By the way, the record should read “on an involuntary basis.” I may have said “on a voluntary basis.” That may be revealing my background somewhat.

First of all, I think an involuntary basis is not a precedent. It is in other jurisdictions’ criteria. Secondly, it would assure those who voluntarily may go to a facility that there is not this quota system, and all of a sudden: “Oh, here I am. This is going to be chalked up. Now I better be careful if I go again because I could be subject to one of these awful orders.”

I was trying to think of a situation in which an individual might go voluntarily. The only argument is, if someone goes voluntarily and for some reason something happens at a facility, then there’s an opportunity to place someone on a CTO. Now if it’s just the individual and they agree, then it need not be a CTO. If a person walked in voluntarily, if they voluntarily agreed to a particular plan—that happens all the time. But the number of people who might fall into a category where someone voluntarily walks in and then may become subject to this, I find difficult to appreciate, frankly.

**Ms Lankin:** I want to speak in favour of this amendment. I want to point out that the next amendment we would be dealing with does the same thing with slightly different wording. It replaces subclause (i) and indicates that a person “has been involuntarily admitted to a psychiatric facility on two or more separate occasions.” That amendment also goes on to change the cumulative period from 30 days to 60 days over the two-year period. I’ve spoken to that earlier.

1620

I think it’s critically important that we pass this amendment to make it clear that these admissions are on an involuntary basis. I want to point out that if a person for some reason becomes an appropriate candidate for the kind of comprehensive community-based treatment that is thought of with respect to a community treatment order and is unwilling to participate in that or is incapable of making that decision, I cannot imagine a circumstance where they wouldn’t meet the criteria for involuntary committal. All that has to happen is that an assessment has to be done that they meet the criteria for involuntary committal. They can then be released under the amendments we passed earlier today, where a person can be released on a temporary release up to 30 days without there being an intention that they come back, with conditions attached. There is a clear mechanism contained within the legislation to deal with that circumstance.

The downside of proceeding with a clause that has the clock ticking on cumulative admission time that includes voluntary time is the chilling effect it will have on the community. All members of this committee have heard very clearly from those in the psychiatric patient community their doubts, their fears and their concerns with respect to this legislation. We have heard that the existence of this provision of community treatment orders will drive people underground. To think that someone reaching out to get help on a voluntary basis is going to question whether or not to do that as a result of this

language is horrifying to me. When we have another mechanism to deal with any individual who presents on a voluntary basis—and then we need to find a way to get them to community treatment order; there’s another mechanism to do that—there can be no reason to put in place a barrier to someone seeking voluntary treatment, given the enormous consequences that it produces in their lives.

Whether you or I think it’s a reasonable assumption that someone would think, “The clock is ticking and if I go voluntarily this may mean I’m put on a community treatment order in the future,” is irrelevant. We have heard clearly from the people involved that that is what the response of the community will be.

Unless I can hear a clear reason why this clause is necessary here, given what I’ve pointed out in terms of the temporary leave provisions that allow us to deal with this in another way by finding someone eligible for involuntary committal and then using the leave provisions, I believe this is a grave mistake and it will have significant consequences in the community.

**Mrs McLeod:** I just want to underscore that. I would really ask the government to look at this in terms of everything they believe about the purpose of this act. The whole idea is to get people into treatment sooner, before they suffer deterioration.

I don’t think there is any question at all that if you go into a psychiatric hospital for an assessment because you’re at an early stage of a psychiatric illness and you want to get treatment, you go in to get that assessment in order to try to get the treatment early, while you’re still competent to make that decision yourself, knowing that just going voluntarily to hospital to get that assessment would start the clock ticking on what could be seen to be a coercive order by that individual will deter people from going in voluntarily and seeking early treatment.

As Ms Lankin has said, I don’t see any downside to this. This is not a trap to change the nature of the bill. It’s not in any way going to affect getting treatment to those who are not able to consent to treatment because of the nature of their illness. It’s just an attempt to make sure that people don’t hesitate to get treatment voluntarily while they’re still capable of doing that.

I would really make a plea, in the interests of just the purpose of the bill, which is to get to people sooner, that this amendment be considered.

**Mr Clark:** The concern the government continues to have with regard to the situation is that if you have a patient who is seriously mentally ill and they have been voluntarily bringing themselves in for committal—

**Mrs McLeod:** Voluntarily?

**Mr Clark:** —voluntarily, and over a period of time their mental illness deteriorates to the point where now a community treatment order may be something that’s plausible, they wouldn’t meet the criteria because they voluntarily committed themselves. So we actually remove a potential component that can help that particular patient.



Moreover, the point that has been made that some people would say, "I'm not going to voluntarily commit myself because this could be used against me at a future point in time," that argument could be used today. People who voluntarily commit themselves today—could not doctors turn around and point to that voluntary commitment, and when they deal with the committal process itself, could not the family bring up that history, if you're dealing with this?

**Mrs McLeod:** Not unless they were dangerous to self or others.

**Mr Clark:** My point still stands. A voluntary committal could still be used right now. I think it's a bit of a red herring. I understand what you're saying, but I think it is a bit of a red herring because it could be used currently against that mentally ill patient. To err on the side of caution and to eliminate that potential by putting in "involuntary" cuts out an entire segment of the population that may at some point in the future need that component. We really feel strongly about it, that it weakens it; it doesn't strengthen it.

**Ms Lankin:** There are three points that I wish to make. First of all, the individual you began referring to who seeks voluntary treatment and then at some point in time becomes appropriate for a community treatment order because of the deterioration of their condition, I'd be interested in your estimate of the percentage of the population we're talking about who would at that point in time refuse to comply with a voluntary agreement in the community, given that they've been seeking voluntary treatment.

But for that very small proportion of the mentally ill population who this community treatment order regime is designed to serve, may I indicate that all you need to do is find that the person meets involuntary committal criteria, bring them into the facility and release them under the provisions we adopted earlier, the temporary leave provisions with conditions, and the conditions can be exactly the same as the community treatment order.

What you've just dismissed by the last comment you made—and it's the third point I want to address—is that what you risk is the chilling effect on that community. It need not make sense to you or to any of us on this committee that this provision has a chilling effect on the individual. For you to say that any voluntary admission already counts towards things, there is no law, there is no clause in this bill that counts up voluntary admissions and says, "You've now met some criteria where the system can do something to you."

The population we're talking about, a very vulnerable population, has expressed clearly at these hearings and on many other occasions that there is suspicion of the system due to their own real-life experience in the system. They have concerns about meeting any threshold where power for their own decision-making is taken away from them. That population will react to this provision. There is nothing you can do additionally within the provision that you can't do under the involuntary admission and leave-of-absence-with-condition

provisions that we passed earlier. What you risk is sending people underground and stopping them from getting treatment on a voluntary basis. It makes no sense to me, given all that we've heard out there. Again, in your answer, you didn't address the fact that we have other mechanisms to deal with that exact population.

If you need to check with someone else, I ask you to stand it down and check. I understand you're not going to change the time frames involved here but, for God's sake, we can't put something in place in the bill that's going to stop people from voluntarily seeking help.

**Mrs McLeod:** I would further ask you to think a little bit about the government's reason that you just offered, because the reason you just offered, the concern that you have about making this involuntary, negates the significance of the bill you're passing. You said: "They can do this now. Why wouldn't this be a deterrent now?" That fails to take into account the sweeping changes this bill represents in terms of the potential for involuntary commitment.

1630

**Mr Clark:** With respect, I didn't say that. What I stated was that if someone voluntarily admits themselves now, could that not be used against them? Wouldn't they have that very same fear under the current act—

**Mrs McLeod:** No, no.

**Mr Clark:** —that at some point in the future it could be a committal process?

**Mrs McLeod:** That's my point exactly. They don't have that fear now because the criteria, first of all for committal to hospital, are so much narrower. That's why you've brought the bill in, to broaden the criteria for two things: one, for admission to hospital. This particular clause doesn't speak to that. This is committal for a whole new range of treatment. This is for a community treatment order. That's frightening for people. We heard that over and over again. They don't know what to expect of this.

Right now, the only way in which you can be involuntarily committed to anything—and "anything" is hospitalization under current law—is "imminent danger to self or others." The narrowness of that is the whole reason for proposing the bill. Again, I just say with respect to the sincere—and I believe it is sincere—attempts on the part of the government to reach a vulnerable population, you don't want to offset that by putting in something which would deter people from getting that very same treatment at an earlier stage voluntarily. I honestly don't believe you miss anybody by putting the term "involuntary" in. All you do is preclude the possibility that people will be deterred from getting treatment early.

**The Chair:** Mr Clark, I believe a request has been made to defer that. Do you have any interest in that?

**Mr Clark:** No, the government is firm in their position.

**Mr Patten:** So that means the government isn't prepared to debate it, I suppose. With the passage of the leave arrangement—which I think was a good one, by the way, because it added another tool—it immediately gives



you the option of a voluntary person going in for whatever reason—I'm trying to find this illusory example, by the way, because it doesn't make sense; I can't think of a circumstance. But let's say it did happen: Someone deteriorates and they say: "There's some stability going on there. How about taking a look at a leave arrangement?" There's one. It doesn't work out and they're brought back. There's two. The eligibility for a CTO is right there.

I say that in terms of offsetting the broader community and the possible—what's the term?

**Ms Lankin:** The chilling effect.

**Mr Patten:** The chilling effect, but they would then be deterred from using treatment programs they otherwise might willingly use for the fear of being counted in this other category, in this other stream. There is now in the bill, with the passage of the leave arrangement, a clear opportunity for that very tiny, tiny group—I can't even think of an example—of the much, much larger group that we may deter, for example. I offer that as an explanation.

**Ms Lankin:** Mr Clark indicated that the government's concern was with respect to an individual who may have, on previous occasions, voluntarily sought admission and treatment in a hospital and who found themselves in a deteriorated state and the appropriate subject of a community treatment order but for not having the criteria of past involuntary admission. I would like Mr Clark to explain to me why that individual is not caught by the provision of having an assessment for involuntary committal, being committed and being released under conditions under the new leave provision.

**Mr Clark:** They may be caught. I'm not saying they will; I'm not saying they won't. They may be caught in it. I'm stating, and I stated very clearly, that my concern is that if you have someone who is voluntarily committing themselves—and with respect, we did debate this in committee; a number of times it has come up. If they're voluntarily committing themselves and there is a deterioration but they may not meet the requirements for an involuntary committal, how do we deal with that situation at that particular point in time, if there's a deterioration of their health, where their family physician sits down and says, "We could do a community treatment order," based on what is permitted under this, but because they were not involuntarily committed, under your amendment—

**Ms Lankin:** If I may, Mr Clark, in clause 33.1(2)(c) we talk about "within the 72-hour period before entering into the community treatment plan, the physician has examined the person and is of the opinion, based on the examination and any other relevant facts ... that,

"(i) the person is suffering from mental disorder such that," and it goes on.

The point has been made to me by the government over and over again, as I keep talking on that section, about the need to at least make sure the individual meets involuntary committal criteria, that meeting the criteria

for referral for assessment is evidentiary-based and higher than after the 72-hour assessment.

Contrary to what you've been arguing to me on one of my future amendments, to suggest that this person, who has sought voluntary treatment, who has now deteriorated to a point where they would be a candidate for a CTO but for the fact that if we change the legislation they haven't met the cumulative involuntary admission criteria, would not now meet the criteria for involuntary committal and be able therefore to be released on the community leave provision with conditions which could be exactly the same as the comprehensive community-based treatment plan contained in an order of conditions for a leave provision, makes no sense to me.

I'd like you to please tell me how any one individual falls through the cracks on this, and if you can, then maybe we all need to revisit this, but if you can't, I think you have to take seriously the deterring factor that we are raising with you on behalf of a population that has expressed it so clearly. It is real for them. It will happen for them. If we can avoid that, then we are helping to get more treatment to more people, which is the intent that all of us have.

**Ms Schell:** I would just like to highlight some of the things Mr Clark has already said in response. I believe we did hear from some people making submissions that no hospitalization requirement should be included. We're hearing very passionately today that it should be involuntary hospitalization. The bill, as it's presently drafted, tries to strike the balance that serves everybody's interests best. I believe what the bill does is look at a three-year history of illness that brings the person to the point where they now meet the criteria for civil commitment.

The distinction between the CTO provisions and section 27, I think, is that while the CTO provisions are intended to facilitate comprehensive community-based services, the leave of absence provisions are much more institutionally based. The person is still tied to the facility. One of the ideas there was—for example, we heard this morning the possibility that a bed is kept for that person if they don't do well in the community. These are tools that may overlap to a certain extent, but they do different things.

**Ms Lankin:** I want to point out that the submissions that have been made in the past with respect to whether or not there should be any hospitalization are at this point in time a bit moot because the government has made a decision there should be hospitalization. We are now dealing with a situation in which we earlier today passed another amendment to this bill and to this act which creates the possibility for a leave of absence with conditions.

The point counsel makes with respect to those conditions not necessarily being the same or with the same intent as a community treatment order is different than the submissions made to us by the very doctors who asked for that amendment, saying that one of the concerns they had is that people in the institution who may be appropriate for being the subject of a community treatment order wouldn't be able to get there because



they're not in the community. You have to be in the community and meet these criteria in order to be put on a community treatment order. They certainly envision using these leave provisions in such a manner. It may be that drafting would be better if we looked at the leave provisions and we built in some of the other protections under the community treatment order, no doubt, but clearly we are speaking of a minuscule population of an already very small population of the seriously mentally ill among the larger population of those with mental disorders.

1640

The downside, on the other side, of the numbers of people who will be affected by the chilling effect of this legislation and this wording and the clock beginning to tick if they seek voluntary admission surely should have more weight than the conceptual hurdle in the drafting of this legislation of the leave provision not looking exactly the same as the CTO provision when it's clear the testimony—and I think the intent of the government with respect to amending that provision was to allow for an individual to be released from hospital into a community treatment order regime where they may not otherwise be eligible for it.

**Mrs McLeod:** I'm just having difficulty understanding why the government "feels so strongly about this." This has been a process where the government has been more than willing to take a real look at things which would strengthen the bill. I think equally, we've been prepared to compromise on some things we think are important, but recognize the government's just not prepared to go down that road. This one just seems to be so uncompromising of what the government wants to achieve with the community treatment order; at the same time, it goes a long way to responding to the concerns we heard repeatedly at committee from people who believe the entire legislation will have a chilling effect on people getting treatment. We're not saying, "Withdraw the entire bill because it's going to deter people from getting treatment," but we're saying, "Here's one thing that can be done that doesn't impair the intent of the bill at all, that would be a significant factor in letting people voluntarily get treatment." I honestly don't understand why there's such a problem to not even look at this.

**Mr Clark:** With all due respect, I think it's a gross exaggeration to state we're not willing to look at it. It's been discussed a number of times in committee and I've taken it back and discussed it with the ministry and with the government. I've already stressed the concern the government has. I've stated it very clearly and articulately in terms of what the impact is. Perhaps it's a judgment call. On one side, the opposition's concern is this is going to be a chilling effect. The government doesn't believe that's the case. The government believes it's more important to have that latitude in the act to make sure voluntary patients can have access to community treatment orders. At the end of the day, we'll be debating the review process in terms of the review of the legislation and all of the rights advice. Everything's been built in.

I think it's a little bit unfair for anyone to state that we're now locking ourselves in and we're not willing to budge so we're tying things up. We have been very flexible. I've done my best to incorporate numerous suggestions from the opposition. On this particular clause, there's a difference of opinion between the government and the opposition. It's the judgment of the government that the position they've taken is not going to have the chilling effect. We may be wrong; I don't know. But the review process will help us examine the impacts of the legislation down the road.

**Mrs McLeod:** Just for the record, since my light's still on, Mr Chair, I haven't had this opportunity to debate with you. We have had "involuntary" in our proposed amendments from day one, from original intent. It's something we felt very strongly about. We were prepared to not push to the drafting point, even, the amendments around the time lines because we recognized the government wasn't prepared to go that route, but we've never said that "involuntary" was not something we thought was an important addition to this.

**Mr Clark:** I didn't suggest that.

**Mrs McLeod:** In all honesty, Mr Clark, I was not presenting this as opposition. There are other parts of the bill where I will present as opposition and it will be a real difference of opinion. I really thought this would strengthen the bill and would also go a long way to reassuring people who do not support the bill.

**Mr Clark:** I'm just stating a difference in judgment, not an opinion.

**Mr Patten:** This will be my final statement, because it sounds like you're stuck with a fixed position—not you personally, because I know you've worked hard on this.

What this means now, if this isn't accepted, is that a doctor, given a general practitioner who may or may not have training, can look at somebody or recommend somebody for an assessment—I don't know who is going to do the assessment—and the person doing the particular assessment can immediately make a recommendation here.

You might have no psychiatrist even in the system at all making a recommendation for a CTO. First of all, I don't see that as possible. I don't think any doctor who wasn't part of consulting with a facility where most of the expertise will be in these kinds of circumstances would want to take that liability. I just think it's an improbable possibility, but we feed that scenario to those who would want to condemn this legislation, is what I say. That's a worry.

**Ms Lankin:** I will make this my final comment too, because we have many other amendments to deal with. I want to indicate, Mr Clark, that it sounds like you are feeling a touch of exasperation in terms of the way in which you've attempted to work to reach consensus. I want to put on the record that in fact I believe you have worked in that way and, therefore, this intransigence is very much out of character. I suspect that means it comes from someplace other than from you.

I want to say to all the members of the committee who sat through the hearings, at a certain point in time



committee members have a role to play with respect to getting to the best legislation. Sometimes that means taking a stand and going back and talking to the government, wherever in the government a decision is being made, and I think in particular this clause warrants that. I believe Mr Clark and counsel have been unable to answer the very direct questions I've put forward about who it is who would be lost or would fall through the cracks, given the leave provision we've put in place and given the stated intent of the use of that leave provision.

In a minute I'm going to ask for unanimous consent to stand this down. I urge the government members to support that and to give your support to the concept and then have a discussion with the representative from the Premier's office, or whomever—although we see one who comes in and out here regularly—because the downside risk of proceeding with this has been so clearly articulated that it is not believable to say that these committee members around this table who heard that have a judgment that something else is true. It may be that people who are not in tune with what has happened, who have not heard the submissions, who are not sensitive to the community's fears out there, believe, and their judgment is that this will not have a deterring effect. That is not the case for those of us who have sat through these hearings.

I hope you will give consideration to this, to give just a little bit more time and that this can come back later in the course of the evening. I'm going to ask for unanimous consent to stand down this amendment.

**The Chair:** Is there unanimous consent among the committee members to stand this down? Agreed.

That takes us to the motion on page 40.

**Ms Lankin:** I want to thank the parliamentary assistant and the government members for that.

I move that subclause 33.1(2)(a)(i) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"(i) has been involuntarily admitted to a psychiatric facility on two or more separate occasions or for a cumulative period of 60 days or more during that two-year period."

Mr Chair, given the discussion that has just taken place, I would like to stand this down.

**Mr Clark:** Agreed.

**The Chair:** That amendment is stood down. That takes us, Mr Clark, to the motion on page 41.

**Mr Clark:** I move that clause 33.1(2)(b) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "care or treatment" and substituting "treatment or care and supervision."

This has become an issue of language inconsistency throughout the bill. The CMHA brought up the issue in terms of trying to make the language more consistent throughout. I think it's pretty well self-explanatory.

**Ms Lankin:** Just a quick question and perhaps a comment. Is there anywhere a definition of "supervision"?

**Ms Schell:** No.

1650

**Ms Lankin:** I won't prolong this. I want to place a concern on record—I recognize that this was recommended by the Canadian Mental Health Association. My concern, without a definition of "supervision" and what we mean here, is that it evokes for me, perhaps because of my criminal justice and corrections background, the concept of a probation order and the type of supervisory conditions that are placed on individuals as an alternative to court. That's not the way in which the community treatment order regime in Ontario is being set up. It is not the intent we've heard; it is not the US-based court diversionary or criminal justice diversionary mechanism. I put on record a concern about the continuous use of the word "supervision" without a definition being added.

I don't expect there is anything we will do about it at this point in time, but I want that clearly on the record. I believe it is an area that needs, in a review, to be highlighted for the person conducting the review, it needs to be understood in terms of the realities of how this provision is implemented and, perhaps in the future, it needs to be given fuller definition in the legislation.

**Mr Patten:** I would just say that I'm sure there would be different institutional cultural perceptions about supervision in the army, in the church, in corrections or in various places. My own background in the Y was that it's a very positive, supportive function of helping a group or a single person, to be a testing board, a reference point and an adviser in a sense. I just say that I think we can take that word itself to mean what we want it to mean.

**Ms Lankin:** Which would be a good reason to have some definition in the legislation.

**The Chair:** Further debate? If not, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

**Ms Lankin:** I move that subclause 33.1(2)(c)(ii) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "for the completion of an application for psychiatric assessment under subsection 15(1) or (1.1)" and substituting "for involuntary admission under section 20(1.1)."

If I may just reference that part of the bill, if you will give me a moment. Clause 33.1(2)(c)(ii) is one of the criteria that a doctor must be of the opinion that the individual meets in order for them to be placed on a community treatment order. This criterion is judged after the doctor has had a chance, within the preceding 72 hours, to examine the individual and the doctor is of the opinion that "the person meets the criteria for the completion of an application for psychiatric assessment under subsection 15(1) or (1.1) where the person is not currently a patient in a psychiatric facility."

On a number of occasions through the hearings, I've made my concerns clear about this. It seems to me that if we are to say that a community treatment order is in fact a "less restrictive" option than being detained in a psychiatric facility—and those are the words that are used in the description of a community treatment order—then we



must be of the opinion that the person actually meets the criteria for involuntary admission, "being detained"—let me use that language—in a psychiatric facility.

I have been of the opinion that it would be wrong for a physician in the field to simply be of the opinion that a person meets the criteria stated here, which is for an order to be assessed, just a referral for assessment. Through the course of discussions and amendments thus far, we have dealt with who the physician in the community will be. We have indicated that there will be special criteria put in place for training and expertise, and that these are specially trained physicians who will be capable of doing psychiatric assessments. It's also been made clear that it is not always a psychiatrist in the field at this point in time who makes the determination that a person meets committal criteria; a physician can do that, and these specially trained physicians out there, who will be the only ones who will be able to issue community treatment orders, will have the background and the capacity to make such an assessment.

I'm not proposing that a person be sent for an assessment; I'm not proposing that they be taken into a psychiatric facility. I'm proposing that the test, in the opinion of these new specially trained physicians, be that the person meets the criteria for involuntary commitment, so we can truly say that the provision of the community treatment order is designed to be a less restrictive option than being detained in a psychiatric facility.

**Mrs McLeod:** I am appreciative—Ms Lankin has raised this in questioning during the committee—of the fact that it doesn't require an actual assessment. But it seems to me I remember Mr Sharpe suggesting that one of the differences between the criteria for involuntary admission and the criteria for a community treatment order was that the community treatment order doesn't require that a person be incapable of making that decision. I share the opinion Ms Lankin has that most of the people who would be under community treatment orders, because of the nature of the target population not being able to access treatment because of their illness, would fall under that incapability. I wonder whether the amendment precludes the possibility that somebody could voluntarily enter into a community treatment order.

**Ms Lankin:** If I may, nothing precludes the opportunity for a person to voluntarily enter into any kind of agreement. The point I've made before is that I agree with Dr Elias that where something is being ordered, then there isn't an agreement in place.

**Ms Schell:** Mr Clark has asked me to speak to this matter. I believe that what is in the criteria for the CTO is actually stronger than simply meeting the criteria for civil commitment in section 20 of the act. In section 15, the criteria for an application for psychiatric assessment actually require some behaviour in the community that is of concern, in addition to the concern about the nature of the mental disorder the person suffers from. So in addition to the mental disorder, which is in subclause (i), and if a person is in the community meeting the criteria for an application for psychiatric assessment in subclause

(ii), in subclause (iii) there is a statement of the physician having to be of the opinion that "if the person does not receive continuing treatment or care and continuing supervision while living in the community, he or she is likely, because of mental disorder, to cause serious bodily harm to himself or herself or to another person or to suffer substantial mental or physical deterioration of the person or serious physical impairment of the person," which is a repeat of the committal criteria but for the requirement that nothing short of custody in a hospital will be of assistance to that person.

It's actually our belief that we've got a stronger test by requiring that the behaviour that would satisfy the criteria for an application for psychiatric assessment also exist.

**Ms Lankin:** In fact the language under (iii) is also a repeat of the new language in section 15. I don't find that argument weighty, in terms of the case I'm making.

The point, as succinctly as I can put it, is that it is impossible to say a community treatment order is less restrictive to a person than being detained in a facility if you are unable to say that person meets the criteria for being detained in a facility. How can you then offer this as some option? There are people who currently are referred for assessment, who meet what you're suggesting is the higher evidentiary test under the provisions for referral for assessment, who then go to a facility and do not meet the criteria for committal.

You can't have it both ways; something is wrong in the language, then. If you are unable to have a doctor say they are of the opinion that the person meets the criteria to be involuntarily detained, involuntarily committed, then it is not possible to say this a less restrictive option for that person.

**Ms Schell:** If I might add a point of clarification, I believe the committal criteria in section 20 do specify that the harms that are anticipated as a result of mental disorder require that the person be in custody. What we have in this part of the bill is a requirement that but for the treatment, those criteria would be satisfied, and I believe that is set out in clause (c)(iii). So with the greatest respect, I believe that concern is satisfied.

1700

**Ms Lankin:** I should learn never to debate with a lawyer, because I'm not a lawyer. But that clause remains. I'm not proposing taking away anything from that clause. That remains there. I'm also not proposing that a person be taken into custody or that they be given an assessment in a psychiatric facility. I'm proposing that the attending physician who will be issuing the CTO, who we have been told will be specially trained, will have the background and the capacity to make decisions about things like committal, is of the opinion that the person meets the committal criteria. I would be pleased if you want to say they meet the referral and the committal criteria. But short of saying they meet the committal criteria, it is to me unconscionable to be moving to a point of saying, therefore, that this person is being given an opportunity for a less restrictive treatment option than being detained because you have not reached any



assessment that they could be detained under this law. It's a threshold question for me. Under this law you have to at least come to an opinion that the person could be detained involuntarily in order for the community treatment order to take effect.

**Mr Clark:** Just a question for clarification to Diana. If the amendment were to proceed, wouldn't it end up forcing patients to be hospitalized before they could get a CTO? Isn't that a possibility, based on the way I'm reading it?

**Ms Schell:** I think that would be a reasonable interpretation, yes.

**Ms Lankin:** Let me jump in and say I can't understand that answer. We have here language that says, in the physician's opinion, "the person meets the criteria for ... psychiatric assessment under subsection 15(1) or (1.1)."

During briefings prior to the beginning of the hearings, I put the question directly to counsel: Does the physician actually have to execute a referral for assessment under 15(1) or (1.1)? Do they have to fill out anything? Is there anything that has to state that the person is at that level? I was told by counsel, no, the physician is of the opinion that the person would meet the criteria set out there. All I'm doing now is saying that same physician—who we've been told earlier today will be capable of, and currently already does make the committal orders—is of the opinion that the person meets that criteria. It doesn't require an assessment in a facility, and it doesn't require a referral for an assessment. If the current language in the bill doesn't require a referral for assessment, which I've been told is not the case, then what I'm proposing doesn't require actual hospitalization or committal.

If the concern that there is a higher or more immediate evidentiary level in the criteria in 15(1) and (1.1) is best solved by adding both of those, that they meet both of those criteria in 15(1) or (1.1) and 20(1.1), then I think we could come to some agreement. But what no one has responded to me on is how, when you don't have any kind of opinion that a person actually meets the criteria for involuntary admission, the community treatment order can be viewed as a less restrictive option to that person being detained? The person hasn't met the threshold in anyone's opinion that they could be detained.

**Ms Schell:** I'll try one more time. In order to issue a CTO that's going to be in a prescribed form, that will have to satisfy, so there will be a record the physician has to make indicating that these criteria are satisfied. With respect to doing a form 1 application for psychiatric assessment, or perhaps as you're suggesting, a form 3 certificate of involuntary admission, those things are not going to happen, because once they happen, they trigger certain consequences under the act. That's why those forms would not be completed.

The point I'm trying to make, in terms of substituting meeting the criteria for involuntary commitment, is that those criteria state specifically that certain harms will

result unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal or voluntary patient. The way we have addressed this in subclause (iii) is to say that but for providing the continuing treatment or care and continuing supervision in the community, the likelihood of these harms that would satisfy the civil commitment criteria exist. So what is left out of this picture where a community treatment order is issued is this opinion that nothing short of the person being in custody in a psychiatric facility will satisfy the concerns that are addressed by the CTO. That's why I would be concerned by having the physician have to say that the criteria for involuntary admission are satisfied, because that includes custody in a psychiatric facility. While we've stopped short of saying that in subclause (iii), the rest of the criteria are there.

**Ms Lankin:** Every time you answer, I have to say that I remain unconvinced that the person would be compelled to go to a psychiatric facility, which was Mr Clark's question. Your answer was that you believe that would happen, or there is a great possibility that could happen.

Subsection 15(1) talks about the referral assessment being as a result of this and, quite frankly, you don't make the parallel argument. However, in the interests of time, and I understand that I have lost this point, I believe strongly that you will find—and I have spoken to heads of psychiatry departments who have told me over and over again of people who are sent on referrals who, in the opinion of the physician, meet the criteria for a referral, who are not committed because the psychiatrist does not believe they meet the committal criteria. To think we are going to take away someone's liberty in the community when we can't even, in our language here, compel a physician to come to an opinion first that the person is suitable to be detained in a facility, strikes me as quite an amazing gap in the logical progression of how these options should be made available to people. That's all I'll say.

**Mrs McLeod:** For the record on this, I do want to note that section 20 of the act, which is referenced here, says that the "physician shall." So I would share some concerns that, if you meet all the criteria for involuntary admission to hospital, there may not be the flexibility—

**Ms Schell:** We referred to the criteria under (1.1) not the criteria under (1).

**Mrs McLeod:** Subsection 20(1.1).

**Ms Schell:** Subsection 20(1.1), not 21(1), which is in the act.

**Mrs McLeod:** I'm reading subsection 20(1.1).

**Ms Schell:** That's (1.1), which is in the bill, not in the act.

**Mrs McLeod:** But as it amends the act, it's "The attending physician shall complete...."

**Ms Schell:** But it's not section 20, it's the criteria contained in section 20(1.1), the criteria. It's not the whole section of the act. The criteria is the new section that's in the bill, not in the act. So it does not contain



within it reference to language of "shall." It's simply the criteria that are met.

**Mr Clark:** With reference to what Ms Lankin talked about—a psychiatrist or heads of psychiatry talking about family physicians sending patients to hospitals who didn't meet the criteria—I can think of two cases in my own community where the opposite happened, where the family physician wanted to do something and sent them to the hospital. The hospital sent them away saying they didn't meet the criteria, and both of them ended up in suicides. Sometimes it's a double-edged sword, because we're dealing with human nature. That being said, I'd call the question, Chair.

**Ms Lankin:** There's no procedure for calling the question. I already said I wasn't going to speak again.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Contrary? The amendment is lost.

1710

**Ms Lankin:** I move that subclause 33.1(2)(c)(iii) of the Mental Health Act, as set out in section 14 of the bill, be amended by striking out "or to suffer substantial mental or physical deterioration of the person or serious physical impairment of the person."

I already put the defence of this amendment on the record earlier, so I won't speak to it.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of this amendment? Opposed? The amendment is lost.

**Ms Lankin:** I move that subsection 33.1(2) of the Mental Health Act, as set out in section 14 of the bill, be amended by adding the following clause:

"(d.1) the person has had an opportunity to obtain a second independent medical opinion and such opinion concurs with the community treatment plan."

In the criteria for community treatment orders in the bill that we have been discussing there are a number of items set out. In the latter half of the bill, when we're talking about the physician consulting with other individuals, developing the agreement around the nature of the community treatment plan and the services that will be provided, one of the things that has been brought forward during the hearings and in other discussions is the right of the individual to challenge not just whether they meet the community treatment order criteria, because there are rights advice mechanisms where some of that can happen, but also the content of the community treatment order.

I'm sorry, I don't have it with me, it's in my larger binder. I made reference to it in second reading debate—the US jurisdiction, and the court challenges that led to this, in which there has been an institutional right of second opinion built in. I believe the court challenge established that right in one of the northern states, and I think it's in California where they have actually built that in as a mechanism within their community treatment order. In the psychiatric facility section—and counsel may be able to enlighten us on this—for treatment orders there, there is a right of both an administrative and

medical review that can take place around the content of it.

One of the things that may be an example of what could happen here is the nature of the medication that is prescribed and the right of the individual to get a second opinion with respect to that medication. They may have more knowledge themselves about what medication may work best for them or what they've heard of new medication. They might feel the physician they're dealing with lacks that knowledge and they may want to challenge that.

It's part of a balancing act. I don't believe, in most cases, it will be widely utilized but it provides an opportunity, particularly for those individuals who have a history—and while they may be having a problem also have some level of cognizance about the nature of their disease and the nature of their response to treatment—to challenge aspects of what may be being decided for them by a substitute decision-maker and a physician.

**Mr Patten:** Can I just ask, implicitly is there not the opportunity now for either the patient or the substitute decision-maker to seek a second opinion on a medical procedure?

**Ms Schell:** Yes, there's nothing to stop a person from seeking a second opinion.

**Mr Patten:** When we carry this through to some elements in the treatment plan, it could get a little cumbersome, it seems to me. Using Ms Lankin's example, if the substitute decision-maker knows that, for whatever reason, there's a new psychiatrist involved, and that particular cocktail advised, and they have tremendous words about it and say, "We would at least like you to consult with another physician and we have a recommendation to make," is that not encouraged or permissible?

**Ms Schell:** I believe it is encouraged. It's certainly permissible. The other thing I would just draw to your attention is that there is a proposal from an amendment before you to indicate that the consent that is required for the community treatment plan must be in accordance with the rules for consent in the Health Care Consent Act, and those specifically indicate that the alternatives to the proposed treatment have to be discussed with the person giving consent.

**Ms Lankin:** To use Mr Patten's words from earlier, what may be contained in various pieces of the legislation and various clauses may not be readily evident to the people we're seeking to serve by this. This not only provides an encouragement for people to think about whether they need a second opinion, it provides a right for them to seek that second opinion and to have some independent concurrence of faith in the establishment of the CTO and the plan that is being offered.

I suggest, from some of the experience in the States, that this is something that's likely to come about as a matter of right through court challenges, and this is an opportunity for us to build it in in a way that is consistent with the language of the section. Surely, at the end of the day—the government calls this a consent-based ap-



proach—we want to give the person every opportunity to have faith in the treatment plan that is being put forward.

**Mr Clark:** Just two quick points, Chair. One is the concern in terms of making it mandatory that there's a second opinion. In northern Ontario we already have difficulties—not even in northern Ontario; I can think in southern Ontario where we have some difficulties—in terms of shortages of physicians and psychiatrists.

I had some stats delivered this afternoon from the Canadian Mental Health Association. At the present time there are 8,735 family physicians providing core mental health services. If family physicians are providing some of these services across the province and there are shortages, how do you make it mandatory that there's a second opinion when in some communities there may only be one doctor? That's one issue that I have.

The second side is—and I refer back to what counsel has said—there is the opportunity now to request a second opinion but, more important, there's an amendment being put forth that again came out through consultations—it's the next one, number 45—that deals with the fact that the physician has to be satisfied that the substitute decision-maker has consulted with a rights adviser and has been advised of their legal rights. We're trying to instil in it that the patients will have a good understanding of what their rights are. So the opportunity is there, but to make it mandatory, especially in communities where there's such a severe shortage of physicians, I have a little bit of reticence there.

**Ms Lankin:** With respect, the language isn't that mandatorily there is a second opinion; it's that it's mandatory that the person have the opportunity. If the person lacks confidence in the plan that's been put forward and wants to challenge any part of it, what's mandatory is that they have the right to obtain a second and independent medical opinion and that such opinion concur with the community treatment plan before this proceeds. So if there is a difference of opinion between medical practitioners about what is the right plan for this individual, they've got to work that out. There have to be some negotiations. It's an empowerment clause for someone who is going to be subject to a CTO to challenge elements of the plan and ensure that it's the right plan for them.

It is only on those occasions where the person feels that the substitute decision-maker and doctor are putting forward something that is not in their best interests. If the person themselves is the one giving consent, if they're capable, they won't agree to the plan. So this is where they're not capable and the substitute decision-maker is involved and the doctor and the decision-maker are putting forward a plan and the individual feels there's a problem with that. We are giving them the right to have the opportunity for a second medical opinion and then to get those two medical opinions to concur about what the treatment plan will be.

**Mr Patten:** Just quickly, I really don't think this takes away from anything. It doesn't limit anything. It manifests what is already there. To say that in certain

areas they may not have the resources, quite frankly if they don't have the physician resources they probably don't have the community resources anyway. So it's probably not going to take place. However, it does underline that there is that right, which, as has been said, has been expressed in other aspects. I would agree with the next motion as well. I see this not taking away in any manner.

**The Chair:** Any further debate? Seeing none, I'll put the question on Ms Lankin's motion. All those in favour? Opposed? The motion is lost.

This takes us to page 45.

1720

**Mr Clark:** I move that clauses 33.1(2)(e) and (f) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

“(e) subject to subsection (3), the physician is satisfied that the person subject to the order and his or her substitute decision-maker, if any, have consulted with a rights adviser and have been advised of their legal rights; and

“(f) the person or his or her substitute decision-maker consents to the community treatment plan in accordance with the rules for consent under the Health Care Consent Act, 1996.”

It speaks for itself, Mr Chair.

**The Chair:** Any debate?

**Mrs McLeod:** Not a debate, but just to note that I believe this is a significant strengthening of the rights advice that's available and therefore adds significantly to the bill.

**Ms Lankin:** Just to indicate I'm in agreement as well.

**The Chair:** Well, I thank you.

**Mrs McLeod:** Just recognizing progress where it has been made.

**The Chair:** Indeed. Any further debate? All those in favour of the amendment? Contrary, if any? The motion is carried.

**Mr Clark:** I move that subsection 33.1(3) of the Mental Health Act, as set out in section 14 of the bill, be amended by adding “and the rights adviser so informs the physician” at the end.

**The Chair:** Any comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment carries.

**Mr Clark:** I move that section 33.1 of the Mental Health Act, as set out in section 14 of the bill, be amended by adding the following subsection:

“Protection from liability, substitute decision-maker

“(4.1) The substitute decision-maker who, in good faith, uses his or her best efforts to ensure the person's compliance and believes, on reasonable grounds, that the person is in compliance is not liable for any default or neglect of the person in complying.”

This came out as a direct concern of the Schizophrenia Society of Ontario and it's simply an issue of liability indemnification.

**The Chair:** Any comments? Seeing none, all those in favour of the amendment? Opposed? Carried.



**Mr Clark:** I move that subsection 33.1(5) of the Mental Health Act, as set out in section 14 of the bill, be amended by adding “and to be informed of that right” at the end.

This is specific to the right to retain and instruct counsel.

**The Chair:** Any comments? Seeing none, I’ll put the question. All those in favour of the amendment? Opposed? Carried.

Ms Lankin?

**Ms Lankin:** Chair, I withdraw that amendment.

**The Chair:** Page 49 is withdrawn.

**Mr Clark:** I move that clause 33.1(7)(a) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

“(a) the person, along with a notice that he or she has right to a hearing before the board under section 39.1.”

**The Chair:** Any comments?

**Mrs McLeod:** Just for the record, I think that’s a significant improvement to the bill in terms of rights advice.

**The Chair:** Any further comments? I’ll put the question. All those in favour of the amendment? It’s carried.

Ms Lankin?

**Ms Lankin:** This amendment deals with language that I have moved on a number of occasions in other parts of the bill where similar language appears and it has been defeated on all occasions. I give up; I withdraw.

**Mr Clark:** I move that clause 33.3(2)(a) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

“(a) he or she has reasonable cause to believe that the criteria set out in subclauses 33.1(2)(c)(i), (ii) and (iii) continue to be met.”

I’ll refer to counsel for an explanation.

**Ms Schell:** This amendment is proposed for the purpose of making the language clearer in this provision of the bill, which has to do with circumstances where a person has not complied with a community treatment order. The test for issuing an order for examination that the issuing physician must meet is worded differently than the threshold criteria for issuing the CTO in the first place. We felt that added a level of confusion that was unnecessary in this process and are proposing that we clear this up by stating the test as it appears in the original CTO criteria.

**The Chair:** Any comments?

**Ms Lankin:** I’m just trying to refer back here. The clause that is being struck out reads, “he or she is of the opinion that, because of the person’s mental disorder, the person is likely to cause serious bodily harm to himself or herself or to another person or to suffer substantial mental or physical deterioration of the person or serious physical impairment of the person.”

It’s common language which appears in sections 15, 16, 20, and in part in section 33.1 as well. Referring to 33.1(2)(c) and the subclauses under (c), without reading them all into the record, can you indicate what the key

concern was? What was missing from clause (a) that was—

**Ms Schell:** There are three tests that have to be met for issuing the CTO. They are the existence of a mental disorder—I’m paraphrasing a bit until I find the exact—

**Ms Lankin:** Actually, I’ve got it here. So there’s a mental disorder which needs continued treatment and care.

**Ms Schell:** Yes, it would be that criterion. It would be that if the person is in the community, in the circumstances they necessarily must be, the grounds for a form 1 exist and subclause (iii) is also in place.

**The Chair:** Any further comments? Seeing none, I’ll put the question. All those in favour of Mr Clarke’s amendment? Contrary, if any? Carried.

Ms Lankin?

**Ms Lankin:** Long-suffering I am, but having given up once, this is the same language. I withdraw this as well.

**The Chair:** Number 53 is withdrawn.

**Mr Clark:** I move that subsection 33.4(3) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

“Order for examination

“(3) If the person subject to the community treatment order fails to permit the physician to review his or her condition, the physician may, within the 72-hour period, issue in the prescribed form an order for examination of the person if he or she has reasonable cause to believe that the criteria set out in subclauses 33.1(2)(c)(i), (ii) and (iii) continue to be met.”

I’ll refer it to counsel.

**Ms Schell:** The same explanation applies with respect to the motion at page 52. The circumstances here are slightly different in that this provides direction for the physician as to what to do where consent to the community treatment plan is withdrawn. There is a requirement in the bill for notice to the physician that that’s the case so that there’s no misunderstanding that this is just a situation of non-compliance. Then there’s a 72-hour window of opportunity for the physician to require an examination to determine whether the criteria for the CTO continue to be satisfied.

**The Chair:** Any comments? Seeing none, I’ll put the question. All those in favour of the amendment? Contrary, if any? Carried.

**Ms Lankin:** I move that subsection 33.5(2) of the Mental Health Act, as set out in subsection 14 of the bill, be amended by adding at the end, “and the person subject to the plan, or his or her substitute decision-maker.”

The section that we’re referring to, 33.5(2) is a section which reads:

“If the physician who issues or renews a community treatment order is absent or, for any other reason, is unable to carry out his or her responsibilities under subsection (1) or under sections 33.2, 33.3 or 33.4, the physician may appoint another physician to act in his or her place, with the consent of that physician.”

I recognize and agree with the need to have a clause that says that if the doctor is unable to continue, we need



to find someone else to take over the community treatment order, but the fact that it would be a bilateral agreement simply between the two doctors strikes me as not being sufficient in terms of a health care system which respects the patient and/or the patient's substitute decision-maker if the patient is not capable of making informed decisions or giving informed consent.

You could have a situation where an individual who is capable finds themselves being transferred to a doctor with whom they've had a very negative experience in the past. It probably wouldn't happen often, but it could happen. Given the comments the parliamentary assistant has made about scarcity of resources, that is a possibility.

1730

Surely, where a person isn't capable, the same thing applies with respect to the substitute decision-maker, that the physician should consult with and obtain the agreement of the substitute decision-maker about who the other physician is who comes in.

I don't put this in place to tie up the existing physician, to stop them if they are unable to continue. The alternative, obviously, is that the community treatment order regime risks falling apart and the individual risks the alternative of being detained in a facility, so I think people are going to come to some agreement. But I can't see that this should be simply an agreement between physicians and that patients and/or their substitute decision-makers shouldn't be empowered by the legislation to have opinion on and be party to the agreement about who the replacement physician is.

**Mrs McLeod:** I want to speak in support of the amendment, and I hope the government will look seriously at it. I suspect the reason this is here is in recognition that there is an onus on the physician in order to provide the supervision of the community treatment order, and that obviously physicians are going to be on holidays, they are going to be away from time to time. In the normal course of a physician being away temporarily and arranging for coverage of patients, you don't want to preclude that happening and make sure that they have to get the consent of every patient they are caring for in order to be able to have another physician responsible for a temporary period.

But the way the clause is worded now, it allows exactly what Ms Lankin has said to happen, which is the actual transfer of the care of that patient to another physician without the consent of the person or the substitute decision-maker. That would be a huge violation of a trust relationship. I quite honestly don't believe any physician would do that. I would like to think no physician would do that, but I don't think the legislation should countenance it, in any event.

**Mr Patten:** Ditto.

**Mr Clark:** Just some quick things. One, there is some concern that when patients develop a certain level of trust—and I know some family members who don't want to go near any other doctor except their doctor, period—it becomes a difficulty when you have a community treatment order and a doctor is going on holidays. So that's why it was a part of the act.

With respect to trying to safeguard the rights of the patients, I would point out that they can still withdraw their consent to the CTO, which is 33.4(1). They can also request re-examination and they can also apply to the Consent and Capacity Board. So there are a number of other things if a doctor assigns them off to someone else for a long period of time or just transfers the entire file. The intention is to deal with the issues of shortages of physicians and holidays and seminars and things like that where the doctor does need to get away but needs to have an attending physician responsible for the file.

**Ms Lankin:** Then the language should have been written that way; it's not. We shouldn't pass bad laws, flawed laws. There is no other group of patients in this province whom we would subject to having their case transferred without their input or consent with respect to changing doctors.

I would point out to you all of the time that the government has spent objecting to, for a period of time, enrolled patient groups like health service organizations unless the patient has the right of choice and the option to move. In this case, you're dealing with a vulnerable population, with a population that is already under an order for treatment, and there is contained within that—and we heard from many of the families—a sense of authority which is not a balanced field. This is not for patients who may feel the right of self-advocacy among many of these things.

I'm not going to prolong this, but I simply say there is no other group of patients or patient population in the province whom we would treat like this, and I think it is abhorrent that we would see fit to allow two physicians to decide to transfer files and not have within that submission that they seek the consent of the patient or the patient's substitute decision-maker.

**The Chair:** Any further comments? Seeing none, I'll put the question on Ms Lankin's motion.

**Ms Lankin:** A recorded vote, please.

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

**The Chair:** The motion is lost.

**Mr Clark:** I move that subsection 33.5(3) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"Responsibility, named providers

"(3) A person who agrees to provide treatment or care and supervision under a community treatment plan shall indicate his or her agreement in the plan and is responsible for providing the treatment or care and supervision in accordance with the plan."

This addresses some of the concerns that were raised by the CMHA during the consultations.



**The Chair:** Any comments? Seeing none, I will be put the question.

All those in favour of the amendment? Opposed? The amendment carries.

**Mr Clark:** I move that section 33.6 of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"Protection from liability, issuing physician

"33.6(1) If the physician who issues or renews a community treatment order or a physician appointed under subsection 33.5(2) believes, on reasonable grounds and in good faith, that the persons who are responsible for providing treatment or care and supervision under a community treatment plan are doing so in accordance with the plan, the physician is not liable for any default or neglect by those persons in providing the treatment or care and supervision.

"Same, other persons involved in treatment

"(2) If a person who is responsible for providing an aspect of treatment or care and supervision under a community treatment plan believes, on reasonable grounds and in good faith, that a person who is responsible for providing another aspect of treatment or care and supervision under the plan is doing so in accordance with the plan, the person is not liable for any default or neglect by that person in providing that aspect of treatment or care and supervision.

"Same, physician

"(3) If a person who is responsible for providing an aspect of treatment or care and supervision under a community treatment plan believes, on reasonable grounds and in good faith, that the physician who issued or renewed the community treatment order or a physician appointed under subsection 33.5 (2) is providing treatment or care and supervision in accordance with the plan, the person is not liable for any default or neglect by the physician in providing the treatment or care and supervision.

"Reports

"(4) The physician who issues or renews a community treatment order or a physician appointed under subsection 33.5(2) may require reports on the condition of the person subject to the order from the persons who are responsible for providing treatment or care and supervision under the community treatment plan."

This addresses concerns from the OMA and the OPA with regard to liability itself, and it's pretty well self-explanatory.

**The Chair:** Any comments? Seeing none, I'll put the question.

All those in favour of the amendment? Opposed? The amendment is carried.

**Mr Clark:** I move that paragraphs 2 and 6 of section 33.7 of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"2. Any conditions relating to the treatment or care and supervision of the person....

"6. The names of all persons or organizations who have agreed to provide treatment or care and supervision

under the community treatment plan and their obligations under the plan."

It's pretty well self-explanatory.

**The Chair:** Any comments? Seeing none, I'll put the question.

All those in favour in the amendment? Opposed? The amendment carries.

**Mrs McLeod:** I move that section 33.7 of the Mental Health Act, as set out in section 14 of the bill, be amended by adding the following subsection:

"Restriction, community treatment plan

"(2) A community treatment plan cannot authorize or require the use of physical or chemical restraints."

If it's in order, I would be prepared to seek a friendly amendment to my own amendment and to remove the words "or chemical." I understand there is some concern about the interpretation of "chemical restraint" as it might affect medicating a patient as part of a community treatment plan. I really do feel strongly about a message that reinforces the whole idea in the bill that this is not about enforced compliance in terms of physical force and that we want to provide as much assurance as we possibly can that nobody is going to be held up against a wall and forcibly administered their medications. In the interest of having the government consider this amendment, I would be pleased to remove the "or chemical" and leave just "authorize or require the use of physical restraints," which I think is completely inconsistent with a community treatment plan.

1740

**The Chair:** As your first order of business, is it acceptable as a friendly amendment for us? Seeing no disagreement, Mr Clark, did you wish to respond?

**Mr Clark:** I'll refer to counsel, to start off.

**Mr Sharpe:** With the voice I've got left, I thought I'd tell a story to that time.

**Mrs McLeod:** Before the vote?

**Mr Patten:** It better be a short story, then.

**Mr Sharpe:** Well, I'll try. I'm the historian; what can I tell you? In the mid-1970s, there was a case involving a patient who was acting out and who needed some medication to restrain them. Four nurses had to hold this person in order to prevent them from doing serious harm to other people and to themselves. Ultimately, that patient charged the four nurses with criminal assault. They worked for one of our government hospitals and one of my first jobs, when I was counsel, was to deal with the issue. I said, "Clearly, they were doing this in order to implement the responsibilities of a facility to take control of someone to make sure they didn't act out in an inappropriate way." Ultimately, six months later the charges were dismissed, but for several months there was a lot of concern around the system about just how far staff could go in restraining patients in appropriate cases.

In 1978, when we sat in this room to put provisions into the Mental Health Act, we decided to put in a provision around "restraint" and define its parameters. It's been altered a bit over the years, but essentially the concept's still there. The concern might be that if you



specifically prohibit these plans from contemplating the concept of restraining people in appropriate cases, might it be perceived as perhaps even undermining the common law requirement? It's not an authority so much as a responsibility to use physical means, for family members, for clinical staff to use what necessary means are appropriate in the circumstances where someone is acting out. It's just a question. I don't know what the impact would be.

**Mrs McLeod:** With respect, which is one of those nice ways we have of saying we're about to disagree strongly with you, the story underlines my concern. This doesn't talk about the use of physical restraints in a psychiatric facility for somebody who's been involuntarily committed to a psychiatric facility. I may wish to disagree with that, but that's not what the amendment speaks to. Over and over again, we asked witnesses what they saw as being the means of enforcing the order. For me, some of the most compelling things were the way you enforce the order is you go out and find somebody who's lost. That's one way of enforcing it.

The other was, if it comes to that, the threat of readmission to hospital, in which case if it comes to that, that's how you enforce it and at what point the physical restraints might have to be used. I understand that. But I just believe that the use of physical restraints in enforcing a community treatment order, which is supposedly being done through consent, whether of the individual or the substitute decision-maker more often, it's still supposed to be a supportive environment that's being created. As long as the threat of the use of physical restraint is there and the images are there for people because of their history with restraints in a psychiatric facility, I just don't think we want that kind of sense of coercion to further colour people's understanding of what the community treatment order's supposed to be all about. Everything that's been said by the government members, by Mr Patten in the presentation of his previous bills, has been that this is to be a supportive environment, not a coercive environment. I would just again argue that if it needs physical coercion, the person probably should be admitted so that we're not changing the nature of community treatment to something less than supportive.

**Mr Sharpe:** If I could just respond for a moment, I suppose the way I saw this was that if someone has a repeated pattern of acting-out behaviour, even though this is in the community, it's an extension of their care in the hospital because they are committable, albeit on the form 1, as part of the criteria for—

**Ms Lankin:** You don't want to go back there. You missed that conversation.

**Mr Sharpe:** I've a feeling we're going to go back there eventually.

**Mrs McLeod:** They're not actually committable. They're only eligible to be assessed for committal.

**Mr Sharpe:** Eligible to be committed. It's an application.

**Ms Lankin:** Eligible to be assessed for commitment.

**Mr Sharpe:** It's an application. That's right.

**Mrs McLeod:** I would still argue, if I may, that if it gets to that point, I do not believe force should be administered in somebody's home. I think if it's necessary to use physical restraints, the person should be admitted, even if it's for two hours, so that it's done by people who are trained, who are administering it in a way where they have professional responsibilities that define the limits of what can be done and that it not be something which is then associated with whatever home environment that individual is in.

**Mr Sharpe:** I understand, and I agree with what you're saying. It's a matter of degree. The images of the abuses of nursing home residents being tied to chairs, and sometimes people are treated that way, the elderly in their homes, is certainly terrible. What I was thinking was more, for the person who acts out and, for an instant, for a moment, for a minute, has to be brought under control physically so they don't harm someone or themselves, would we be preventing that by putting this amendment in? Might people perceive that—

**Mrs McLeod:** But that's not what the amendment says. "A community treatment plan cannot authorize or require ... physical restraints." So your scenario doesn't apply. Do we have to go to a vote?

**The Chair:** We've got a couple of minutes, if you don't mind.

**Ms Lankin:** If I may just add to that, I think in furthering—not all, but a lot of the situations that you're speaking to, Gilbert, would be circumstances where the common law around self-defence would apply. You could think of that one individual who needs a bear hug to calm down. I don't know if that's the situation, but it strikes me that's not generally this population that we're talking about. However, what this suggests is that it can't be authorized or required in the plan, and professionals use their judgment in those circumstances.

Perhaps it's something you could give a moment's thought to while we go to vote. Given the common law around the right to self-defence, the right and obligation to intervene if someone is about to do harm to themselves, if you see someone with a knife to their own throat or a gun to their head and you stand by, there's an issue there. If it's about someone doing—

**Mr Sharpe:** That's really what I'm talking about.

**Ms Lankin:** If there's someone about to do serious harm to themselves or someone else, I think there is common law to protect that situation—

**Mr Sharpe:** There is.

**Ms Lankin:** —and this is contemplating something different in terms of authorization or requirement of use of physical force.

**Mr Patten:** Can I just add my concern to this? I think it really is crucial to the practitioners who are going to be part of community programs that they do not see themselves intrinsically in the plan. It's not in the plan. In other words, if such a circumstance arose, it could happen anywhere and anybody around would try to do whatever they could. They would call the police or they would call a doctor immediately, whatever, and they



would take immediate action, regardless of the plan. If it did happen within a time frame in which a plan was in progress, it would seem to me it would be quite valuable maybe for the patient to be brought back to the facility and then they try it once more, and they say: "Our job is not to do that. Our job is to completely help you again."

I would say to protect the integrity and working environment of the plan, their job is of course to monitor compliance, that's for sure, to be as helpful as possible and to provide some supervision, but it's not built in that if you step out of line, we are going to coerce you. That's not our job.

**The Chair:** If you want to phrase a quick response, we've got about six minutes before the vote.

**Ms Lankin:** Can we not do that when we come back?

**The Chair:** OK.

*Interjections.*

**The Chair:** I tell you what, if that's the consensus of opinion, the committee will recess till 6:15.

*The committee recessed from 1750 to 1818.*

**The Chair:** I call the committee back to order. We will continue our clause-by-clause discussion of amendments on Bill 68. We were in the middle of discussing the amendment on page 60. I don't know whether there were any further comments that any members intended to make?

**Ms Lankin:** I think we were about to have a response.

**The Chair:** All right. A response from Mr Clark or any of the ministry staff?

**Ms Schell:** The only thing I would like to add to Gilbert's response is that the Health Care Consent Act does set out the common law duty with respect to restraint, and it says: "This act does not affect the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others." That sets out the parameters for restraint that are authorized by the common law and the duty there.

I don't know if that gives Mrs McLeod any comfort, but it does seem to address this issue. I would be concerned that if there was a further provision with respect to restraint it would make it impossibly difficult for caregivers to understand what their obligations are here, that they might hesitate to fulfill their common law duty, thinking that perhaps it is in violation of the amendment that's being proposed.

**Mr Patten:** This is a technical question. Is there a way of referencing that—we have a lot of things that refer to other acts—such as an asterisk related to the issue of restraint at the bottom of the bill that explains?

**Ms Schell:** I think so, but unfortunately, I'm going to have to give you a lawyer's answer here. The way we've set up this legislation is to put the community treatment plan into the definition of "treatment" under the Health Care Consent Act, so we bring in those rules with respect to treatment and informed consent and so on. I do think it's there, and I think there was an attempt in an earlier motion to clarify that further by specifically referencing the rules for consent in the Health Care Consent Act.

**The Chair:** Do you wish to comment on that?

**Ms Laura Hopkins:** I'm sorry. I stepped out for a moment.

**Mr Patten:** The legal counsel was saying that they're concerned about reiterating or identifying specifically this requirement that they cannot authorize requirement of physical restraint, or restraints, period. However, because it's already in the other bill, I'm asking if there's a way in which you can reference it so that someone can read in that section a reference to the act which states blah, blah, blah, if you know what I mean.

**Ms Hopkins:** There probably is. I'd need to speak with Diana for a couple of minutes, because this is a fairly intricate area of law. If you don't mind, I'll take a couple of minutes and see if there's a suggestion I can make.

**Ms Lankin:** I would like to actually make a suggestion around that. But let me say that what Diana just said underscores the point I made earlier, that this language that's being proposed indicating a community treatment plan cannot authorize or require the use of physical restraints would not take away from the common law duty. The reference of the Health Care Consent Act actually makes that explicit, except it's not explicit in the language that's before us here. What you're saying is that it could create questions in caregivers' minds.

My suggestion is to import the language from the Health Care Consent Act—that exact clause that you read—in as a subclause: "A community treatment plan cannot authorize or require the use of physical ... restraints. Nothing in this act takes away from the common law duty to ... ." Then I think you've got that covered.

If I could point out, I do believe, and it's been drawn to my attention, that the use of forced or physical restraint in a hospital setting has an oversight requirement. There are people who must file reports when that is done. There is a review of what has happened. There is no such provision built in here should, for example, a community treatment order be written in such a way to require restraint. We don't have that same kind of oversight. We've got all of the common law and all of the duties of health care professionals under RHPA and all of the provisions under the Health Care Consent Act, but none of that is imported here in a way that is clear.

Surely if we're looking at clarity, you would want to have that kind of oversight and authority and review built into the use of force and the use of physical restraint in the community as well. One way around it is to indicate that the plan can't authorize or require that, but nothing takes away from the common law duty and the Health Care Consent Act. We could build that into the actual amendment.

**Mrs McLeod:** This is essentially the same point, but I would think the government would be reassured by the response that you've just provided, that this doesn't take away from the responsibility of the family in the normal course. I would really ask government counsel to rethink objection to the amendment on the basis that you have



that reassurance built into the Health Care Consent Act. All this is really saying is that the use of force to enforce should not be built into the plan itself.

**Mr Clark:** I have a couple of concerns. Assertive community treatment teams are not restricted from using any type of restraints in the community currently. We don't restrict them from doing it; it's their call. If there's something going on, it's their call.

The other concern I have is that during the consultation process, I didn't ask the psychiatrists, the OMA, the assertive community treatment teams about this issue. I really didn't. It came up towards the end of the consultation.

Those are my two concerns. Did you have anything to add?

**Mr Patten:** Brad, I just had one other point. I think there's a distinction. You have a plan in front of you and it doesn't say, "By the way, if they don't comply, then exercise physical restraint and then give them a shot," whatever. That's not part of your plan. We're talking about a treatment plan here. There is always, as it's been said by legal counsel, the opportunity, in exceptional circumstances, to exercise your common law duty. I think that's there in any circumstance, so it does not preclude that. That is still there in the bill. But this is saying that the treatment plan, by agreement, is going to be—who the hell is going to agree with that point if you had the other one? It seems to me if you build it in you're not going to take it away.

**Mr Sharpe:** I would just add one point. None of us are clinicians. Following up on your point, let's take a dual diagnosis individual who, as a consequence of the developmental handicap, has a pattern of acting out and showing aggressivity, but one wants to have them in the community under some kind of supervision and care treatment. It's important to build into the plan the notion of a type of restraint that works when they do act out, that that's part of their lifelong pattern of behaviour. If this would preclude it, I don't know the answer to that. I suppose, as Mr Clark said, it's a change that we've not had a chance to talk to clinicians about. Might it be that we're precluding the application of CTOs to certain types of people who would then have to stay in hospital? I just don't know the answer.

**Mrs McLeod:** I don't think we can envisage all possible scenarios around the table, but rather than err on the side of not missing a single person who could be caught under this brand new expanded power to commit, I really think that once in a while we should err on the side of something we know will exist, and that is a fear of community treatment orders, which are supposed to be supportive, being seen to be coercive through the use of force. What this primarily does is assure people that's not part of what a community treatment plan is all about. To me coming into this as it was presented through Mr Patten, it was not envisaged that these would be forcibly applied.

**Ms Lankin:** I want to echo that and indicate that the situation that you've raised as a possibility is something

that would be caught in the review and could be addressed, if necessary, with specific language to allow for the possibility that it may become a course of action out there for certain doctors to order restraint and medication for certain patients with the agreement of a substitute decision-maker. I see that as a real possibility. There are certain substitute decision-makers and doctors who could come to that conclusion. That is not what I think any of the members of the schizophrenic societies would want to hear or anyone else envision that this provision would be useful.

I think very clearly, although I agree with the caution that Diana has given in terms of not wanting to create confusion among the caregivers, I would say let's simply rewrite this amendment and, with the agreement of Mrs McLeod, add in the actual language from the Health Care Consent Act that says this doesn't take away from the common law duty to act to prevent someone from doing serious harm to themselves or someone else.

**The Chair:** Thank you. Any further comments?

**Mrs Julia Munro (York North):** I have a question for legal counsel. I understand the intent here, as has been suggested in this amendment, by referring specifically to the treatment plans, but I wondered. The question of physical restraint I think comes to mind for all of us in a very dramatic, physical way. Would the inclusion of language such as that open up the possible interpretation of technologies and things that we don't even know about in terms of—I was thinking—an identification process or things like that, which could be legally construed as physical restraint and in no way be the kind of thing that you have in mind when you present this amendment but, in fact, would then act as an impediment to the possibility of newer technologies or whatever that might then become available and then would create a legal impediment?

1830

**Ms Schell:** I think that's certainly possible. I hadn't thought of the problem from that point of view, but you raise an interesting point. It's a point that goes with my concern about a further muddying of the water here. These issues of restraint are very complicated. Ms Lankin has referred to the criminal rules, we've talked about the common law, and we've talked about references in the statute already to this issue. I can see the problem that you mention arising. I don't have a specific example that comes to mind, but it certainly is a possibility.

**Mrs Munro:** I understand the issue in terms of the plan, but it just occurred to me that there might be something where it would open up and then become an impediment to treatment.

**Mr Sharpe:** You mean like a device to monitor somebody?

**Mrs Munro:** Yes. Would that be something that would be construed as physical?

**Ms Schell:** It could be. I have heard anecdotally that there are some institutions that use monitoring devices now—not, I hasten to add, the provincial psychiatric hospitals. They get their advice from the office that



Gilbert and I work for—or Gilbert used to work for, I should say. I think that those kinds of things that limit a person's ability to have the same kind of liberty that we all have could be construed as restraint.

**Mrs McLeod:** The whole act does that.

**Ms Lankin:** If I may, then the requirement of a community treatment order to report at certain points in time greatly limits a person's ability to live within a certain jurisdiction. If anything, for me, the question that you raised gives all the more urgent concern to have this language included. If we could, in the future, envision as part of a community treatment plan someone being outfitted with electronic monitors—I mean, these are people who need treatment and help and support; these are not people who are subject to criminal detention in any way.

I want to come back to the point that Diana makes. A reference in the Health Care Consent Act around this is not going to be something that is generally known or understood under the provisions of the community treatment order. It will be the way in which most health professionals operate, because they've been trained to understand the Health Care Consent Act, but not necessarily community service providers and community agencies—they don't have the same level of understanding or expertise or familiarity with that legislation—and certainly not family members.

It seems to me that importing that provision from the Health Care Consent Act has value in and of itself, to have that clearly in here in conjunction with this provision. I can't imagine a situation where we would believe that it is appropriate to have physical restraint as any part of a plan that's out there. That's not what this is all about. Let's be very clear. In an emergency situation where a person is at risk of harming themselves or someone else, the common law language and the language from the Health Care Consent Act will cover that and will be clear if we import that in here. Otherwise, we are leaving this open to someone including in a community treatment plan the use of physical restraint, the use of which is regulated in a facility setting, with authority, oversight, reporting mechanisms and reviews. We have built none of that protection into the community side of this. This will live up to the fears that people have had about this.

I don't think the government at all intends that a plan would be used for someone to be held and injected, and that's what is envisioned as a problem, and unless we build in the prohibition of the use of physical force or physical restraint that may well happen. That will certainly discredit the whole attempt of what the government is purporting to put forward in terms of the compassionate treatment regime.

**The Chair:** Thank you.

**Mrs McLeod:** With appreciation to legislative counsel, I do have a friendly amendment to propose. The amendment would add, after the word "restraint," the words "however, for greater certainty, this does not affect the common-law duty of a caregiver to restrain or confine

a person when immediate action is necessary to prevent serious bodily harm to the person or to others."

I ask consent to introduce that as a friendly amendment. That's directly from the Health Care Consent Act.

**The Chair:** Do you agree that would be incorporated from the amendment? Seeing no dissent, consider that incorporated.

**Mrs McLeod:** If I may, Mr Chair, I think we may have exhausted debate on this but I do want to state two things: First, a deliberate vote against this, I believe, invalidates a lot of what has been said about the purpose of the community treatment orders.

Second, I do believe that if this bill goes to court—whether in a charge against the way the bill is written or as a result of some harm having been done to somebody as a result of the exercise of physical restraint in some way—the fact that the government wasn't prepared to vote against authorizing the use of physical restraint as part of the plan would be a problem if the government has not moved immediately to provide those protections in terms of the supervision that would be required to ensure that this could be done in a safe way. I really think the government would take on to itself a lot of onus to make sure that those protections were put in place immediately.

**The Chair:** Any further comments? Seeing none, would the committee like a copy of the amendment Mrs McLeod has just read or do we all understand the addition? Seeing no request, I'll put the question.

**Ms Lankin:** Recorded vote.

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

**The Chair:** The amendment is lost.

The next amendment is page 61.

**Mr Clark:** I move that section 14 of the bill be amended by adding the following section:

"No limitation.

"33.8 Nothing in sections 33.1 to 33.7 prevents a physician, a justice of the peace or a police officer from taking any of the actions that they may take under section 15, 16, 17 or 20."

**The Chair:** Any comment? Seeing none, I'll put the question.

**Ms Lankin:** Can I just ask for a brief explanation?

**Ms Schell:** Certainly. This amendment is proposed to alleviate any confusion about whether or not, in appropriate circumstances presently authorized by the law, physician other than the one who issued the CTO or a justice of the peace or a police officer or a physician in a psychiatric facility can take action under the sections that are referenced here.



The nature of the concern was that, as you know, we're in a mobile society where somebody could be on a CTO here, they're lost track of, they're in difficulty in Thunder Bay and the physician in Thunder Bay, at that point, or the police officer or the justice of the peace, is uncertain about how their other statutory obligations mesh with the rules under the CTO.

**The Chair:** Any other comments? Seeing none, I'll put the question. All those in favour of the amendment? Contrary, if any? Carried.

**Ms Lankin:** I'll read this into the record and then seek some clarification from the government before deciding how to proceed.

I move that section 14 of the bill be amended by adding the following section:

"Review of community treatment orders, plans

"33.8 The Lieutenant Governor in Council shall appoint a person to undertake a comprehensive review of, and to report on, the provisions of this act relating to community treatment orders five years after those provisions are proclaimed."

There is a Liberal motion to set in place a review on an ongoing periodic basis of two years. There is a further motion from the New Democratic Party to establish an office of the mental health advocate, which has as part of its responsibility a review of the effectiveness and implementation of community treatment orders so there's some more detail in terms of what's expected. I understand that the government has given consideration to and perhaps has a proposal with respect to an effective review period.

I am not wedded to this language. This is an alternative in light of the slim possibility that the government might not support my mental health advocate's office amendment. I think that if we could get some clarification in terms of the government's intent with respect to a review, I might be willing to stand this amendment down, and subsequent amendments, depending on what we hear.

**Mr Clark:** With the Liberal motion, which is number 63, it's the government's intention to offer a friendly amendment to section 2, "A review must be completed"—where the Liberals have every two years, we're suggesting every five years—"and the first review must begin no later than the fifth anniversary of the date on which" yada, yada.

1840

**Ms Lankin:** Given that, do I understand that there will be agreement to that friendly amendment? No? OK.

**Mrs McLeod:** I won't say no right off, but I consider five years to be too long.

**Mr Clark:** Let's just stand yours down and we'll talk about 63.

**Ms Lankin:** That's just what I'm trying to say. I will stand this down at this point in time, as opposed to withdrawing it.

**Mr Clark:** I knew it was coming at me.

**The Chair:** Given the relationship, I suggest we stand this down just until consideration of number 63.

**Mr Clark:** What a great idea.

**The Chair:** Unlike the others, where we've deferred to the very end of the entire process, is my point.

**Ms Lankin:** I'm in complete agreement with you.

**The Chair:** Thank you. As always.

**Ms Lankin:** At one point in my life, I had to find the opportunity in which I could say I was in complete agreement with Steve Gilchrist, and it just happened.

**The Chair:** I imagine we have lots of tapes of you saying that on the CBC.

That would take us to motion 63.

**Mr Patten:** I move that section 14 of the bill be amended by adding the following section to the Mental Health Act (after section 33.8 of that act):

"Review

"33.9(1) The minister shall establish a process to review the following matters:

"1. The reasons that community treatment orders were or were not used during the review period.

"2. The effectiveness of community treatment orders during the review period.

"3. Methods used to evaluate the outcome of any treatment used under community treatment orders.

"Same

"(2) A review must be completed every two years, and the first review must begin no later than the second anniversary of the date on which subsection 33.1(1) of the act comes into force.

"Report

"(3) The minister shall make available to the public for inspection the written report of the person conducting each review."

**The Chair:** Thank you. Any comments?

**Mr Clark:** If I may try to explain why the government was suggesting five years instead of two years: It was actually Dr Marie Bountrogianni who raised the point during the hearings about the validity of different scientific studies and reviews because of the narrowness of the audience that's included in that review. So the concern that I took as she was talking about it, and then going back and talking about the review, is that in two years after the bill the question becomes, "Will there be any validity to the review if there is very little use of the CTOs during that two years?"

As the education period unfolds, as we begin educating the assertive community treatment teams, the psychiatrists, the physicians, the nurses, everybody, as all that unfolds, I don't think it's going to happen overnight, that this particular act is going to start having an immediate impact. There has to be an implementation and education period.

The two years, from my concern at a personal level, was very tight, and you may not have sufficient evidence to review at that point. That's why the suggestion was being made, with complete respect, to just make it a longer period of time. I'm open to suggestions in that regard, but I think it should be a slightly longer period of time.



**Mr Patten:** If I could just say to that, I think two to five is a grave difference. The other thing is, there was another amendment made suggesting that the period of first review begin two years following the actual implementation of the program rather than the passage of the bill, which I think would cover off somewhat.

I think the first period of time, as I look at it, is, what are we learning? In the spirit of learning and what's working and where we need to make some adjustments and things of that nature, five years is a hell of a long time, it seems to me. If there's a compromise there of even a three- or four-year period, I would agree.

But with the other qualifier, it would not be from the point at which the bill was passed but at which you implemented something. Saskatchewan, I believe, waited two years before they had full implementation of their program and then they began their review on this.

**Mrs McLeod:** I appreciate the openness in looking at intent here. The reason I was so quick to react was because, to begin the first review five years after the implementation—and I note with appreciation that there is a subsequent amendment proposed by the government to have the implementation of the community treatment orders as of December 31, 2000, which would mean that the beginning of the review would not begin until January 2006. We could be talking seven years before we actually have something that tells us whether this is working and whether there are problems.

I appreciate what you're saying about conclusive evidence drawn from a significantly large population. But I don't think that's what is set out in here in terms of the purpose of the review—conclusive evidence as to whether or not we should keep on with community treatment orders or abandon them. The intent was, and it says, "The reasons that community treatment orders were or were not used during the review period."

I think there are two reasons why we might not have a large target population to consider at the end of two years, to begin to consider after two years. One is that we have got so many community supports in place that the people are getting the support without having to go through a commitment process. That would be a very positive reason not to use CTOs. The other would be that there are not enough community supports in place in order to implement the CTOs, in which case at the end of two years, if we're not seeing CTOs used because we don't have community supports in place, all of us who are committed to doing something with this would want to say: "Wait a minute. At the end of two years, if we're not using the CTOs, we'd better know why." If we wait seven years to find out we're not using them because the community supports aren't in place, that's seven years of people going without the kind of treatment support they need. I would argue that we need to begin that much sooner.

**Mr Clark:** Might I suggest, then, in keeping with what the intent is, that the first review would be three years instead of the two years and then each subsequent review could be five years.

**Mrs McLeod:** I like those better, but—

**Mr Clark:** I thought you might. Once we've done the initial review, then my suggestion is that we should have a formalized format every five years. I still think at some point, even in the review, if I was involved in the review, that I would be keenly interested in having some peer reviews in terms of the analysis of the data that are coming in to find out whether or not it is working.

**Mrs McLeod:** Could I negotiate one other change, then?

**Mr Clark:** Sure. You can try.

**Mrs McLeod:** Five years on the regular review, but the first review would be undertaken within the first three years, within the third year.

**Mr Clark:** Within the first three? Yes, that's fine.

**Mr Patten:** That's what you said before.

**Mrs McLeod:** No, it's beginning, and I just think if we're waiting three years we should make sure it's done within that third year.

**The Chair:** Mrs McLeod, once you bring the response, perhaps at some point you could read the actual sentence you're proposing.

**Mr Clark:** I think the way the Liberals have it actually worded—unless I'm misinterpreting it, I don't know—is that a review must be completed within three years.

**The Chair:** If I understand Mrs McLeod correctly, were you saying that a review must be completed every five years and the first review must begin no later than the third anniversary of the date?

**Mr Clark:** Yes.

**Mrs McLeod:** I was suggesting, and I could offer wording: A review must be completed every five years and the first review is to be undertaken and completed within the third anniversary of the date.

**The Chair:** "Must be completed."

**Mrs McLeod:** Must be undertaken and completed, so it doesn't suggest it would begin beforehand.

**Mr Clark:** I'm just trying to think of the process within that three years.

**Ms Schell:** I'm not sure I understand the proposal here. Could we try that one more time?

**The Chair:** If I understand it, Mrs McLeod is changing in the first sentence the "two" to "five," and the first review, rather than begin, must be undertaken and completed—but the "completed" is the operative point—no later than the third anniversary of the date on which subsection 33.1(1) of the act comes into force. Is that correct?

**Mr Clark:** I hear what's being said. The concern I have, then, is that again we may find ourselves in a position of having to start a review in the second year, with insufficient evidence to review.

1850

**Mrs McLeod:** That wasn't my intent.

**Mr Clark:** I understand that, but a review could take anywhere from six months to a year to do it effectively, so they quite conceivably could find themselves reviewing it.



**Mrs McLeod:** Would you settle for “undertaken within the third year”? Leave out “completed,” and undertake it, which provides you with the flexibility if it simply can’t be completed but says to me it’s more than beginning.

**Mr Clark:** That’s fine: “undertaken in the third year.” That would allow them that latitude so they’d be doing it in the third year.

**The Chair:** Ms Lankin, do you still have comments?

**Ms Lankin:** Yes, one suggestion and one comment. I would offer, as people are drafting that, that we invert those two provisions in the language to make it clear that it would be:

“(2) The first review must be undertaken within the third anniversary year of the date on which subsection ... comes into force, and a review must be completed every five years thereafter.” It reads better and is understandable.

I’d like to comment, with respect, and people know, again from my comments on the record, from the beginning I have indicated the need for oversight for review of the CTO provision: the effectiveness of it, when it is utilized, when it’s not, given the provision that if community resources out there are not being utilized. I have two or three different amendments that get at this very issue. I have no pride of authorship and am fully willing to support this particular amendment.

I will point out one problem that I have with this amendment, and that is that it’s structured that “The minister shall establish a process to review the following matters....” I remain absolutely convinced that it’s necessary to have a process where there is a person appointed outside of the ministry and the minister’s review and the report made public through the ministry only.

I need not detail all the reasons why. Those of you who have heard even recently my concerns around nursing homes and other things within the Legislature will understand my skepticism at this provision. However, it is necessary that the review be done, and if this is the language that the government is willing to accede to, although I think it is inferior to a provision that would have an outside oversight, it is critically important that there be a review and a public report. The quality of that report is something we can comment on, as legislators, at that time.

I support the discussion around the friendly amendment on the time period and will certainly support this amendment, and when we return we will appropriately withdraw the previous amendment that I had in. However, I will continue to proceed with the amendment that deals with the office of the mental health advocate in the hope that once that’s established, that is the person the minister will assign this job to.

**Mrs McLeod:** I agree with Ms Lankin’s comments, but I think what we’re trying to do is practically out of the possible because the skills of opposition politicians get a little rusty. But it has been suggested by legislative counsel that we stand this down long enough for her actually to draft the amendment, that could then be—

**The Chair:** Does everybody agree? Agreed.

That takes us to Ms Lankin, number 64.

**Ms Lankin:** I move that section 14 of the bill be amended by adding the following section:

“Rights of persons not subject to community treatment order

“33.9 A person who is not subject to a community treatment order is entitled to obtain comprehensive mental health services.”

One of the concerns that has been legitimately raised during the hearings, and it’s a concern I concur with, is with the inadequate level of community resources that currently exists in this province, the possibility that a person being placed on a community treatment order may somehow take priority in terms of access to services in the community, and that others in the community who are voluntarily seeking those treatments will be bumped down the list in terms of access to the treatment. This has been expressed in a number of different ways by a number of presenters who have come forward.

This amendment is an attempt to ensure here, together with a number of the provisions in the rights sections which have been stood down, which talk about access to treatment in a timely fashion—there are a number of variations of that there—to make it clear that a pre-requisite of getting comprehensive mental health services in the community is not being placed on the community treatment order. I offer the amendment in that spirit.

**Mrs McLeod:** We have agreed with the concern, and certainly heard it during committee presentations, that this 5% may take priority over the other 95%. We had proposed this in our original list of suggested amendments and dropped it in favour of, for our purposes, including it as one of the rights.

**The Chair:** Further comments? Seeing none, I’ll put the question.

All those in favour of the amendment? Opposed? The amendment is lost.

Number 65, Ms Lankin.

**Ms Lankin:** I move that section 14 of the bill be amended by adding the following section:

“Mandatory services

“33.10(1) The minister shall establish a list of mandatory community treatment services to be provided by all regions, as prescribed.

“Standards

“(2) The minister shall develop and establish standards for community treatment services, as prescribed.

“Regulations

“(3) The minister may make regulations prescribing mandatory community treatment services and standards for such services.”

In the presentations we received and in the verbal questioning of witnesses, I put the proposition of the establishment of a mandatory list of the minimum services that must be made available in all regions, and standards being developed for that; I put that idea forward.



There was, as I recall, every time I raised it, unanimity in agreement with this proposal. Those who were the strongest proponents of the legislation, for example, representatives of the schizophrenia association, agreed with it; psychiatrists who came forward agreed with it; psychiatric survivors agreed with it; family groups that were opposed to this legislation agreed with it. There was not a detractor from this concept.

I pointed out on a number of occasions that there is precedent in the province with respect to this. The Long-Term Care Act, which was passed by the New Democratic Party when in government, set out actually in the legislation the list of services. They actually named the services under areas of nursing care and personal care homemaking that must be made available to the multi-service agencies in that legislation in all regions of the province. It was part of an attempt to (1) acknowledge that there is a huge differential across the province in terms of what is available for people, and (2) establish a minimum list, a basket of services that the government must ensure is there and available. It is an accountability provision back on the government. The government has the responsibility for this.

It has been recommended in submissions that we received, for example, from the RNAO, that this is an essential provision that must be contained within the bill in order to make community treatment orders work, to ensure that there isn't the regional differential etc.

I have effectively gone light on the government with this amendment in that I have not specified those services in the bill and have suggested that those services will be delineated in regulation, which gives the government some time to develop an appropriate list, to do the consultation around that and put forward a list which can be added to over time, as government provides additional resources to the community sector.

We have heard over and over again from all those who were in support of this legislation that one of the biggest concerns about the ability to have this legislation live up to its intent is the problem of lack of resources, and the fact that at this point in time it is estimated that we are about \$600 million shy of what is required in the community alone to effectively meet the need of persons with mental illness and, within that, the subsection to be able to implement comprehensive base services for community treatment orders.

For me, the willingness of the government to take some accountability themselves with respect to this legislation, to ensure that this is about accessing treatment and it's not about simply pushing public safety hot buttons, is judged by their actions in a few key areas. I have been disappointed that to this point there has not been a movement on the part of the ministry to cause a revisiting of the orders of the Health Services Restructuring Commission and their recommendations with respect to psychiatric beds, for example. The numbers that have been determined through that process were based on existing legislation and experience under the existing provisions of involuntary committal and voluntary

seeking of services. We know that with a broadening of the involuntary committal criteria in other jurisdictions, like Washington—in a study that comes from there—there was a huge increase, of over 50%, in need and demand for psychiatric beds. The number crunching that led to the recommendations of the Health Services Restructuring Commission needs to be revisited at this point in time—it's a no-brainer to me—and yet there's not been any action on that.

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The repeated calls for establishment of sufficient community resources and the repeated assertion that we are about \$600 million shy is very worrisome to me, both in terms of adequate level of treatment and access to timely treatment for the whole population but in particular with respect to regional variation and the ability to utilize the good intent of the community treatment order as has been put forward by the government.

I am not telling the government what those services shall be. I am not telling them what the standards shall be. We're setting out a process for those to be developed in regulation through whatever process the government wants—collaborative consultation—and through a process where it starts with a certain list that can be augmented over time as resources are available. What I am saying is that as a committee we should have the will to insist that governments of all stripes, now and into the future, be accountable enough to list what the basic expectation of themselves is with respect to these services in the community and that those resources, on a minimal and growing basis over time, be provided equitably across the regions of this province. That's the intent of this amendment.

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of this amendment?

**Ms Lankin:** Can we have a recorded vote, please?

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

**The Chair:** The motion is lost.

**Ms Lankin:** Mr Chair, I would just like to indicate that, although no one has violated any orders, I find it incredibly disrespectful that there isn't even a response from the government when they choose to vote against something that I put forward as serious as this matter.

**The Chair:** Ms Lankin, I can tell you, having chaired approximately 20 bills, there's no obligation for responses—

**Ms Lankin:** I acknowledged that.

**The Chair:** —from either party to amendments from any of the three parties.

**Mrs McLeod:** Again, it was one of the amendments that we had indicated an intention to bring forward. It



was my understanding that the government was prepared to look at regulations and I really would have appreciated some indication that those regulations will be forthcoming.

**Mr Clark:** We will be looking at regulations through the implementation period. In terms of the service itself, we've put in the act itself—and I know we'll be getting back to that question so very briefly—that the physicians themselves had to make sure the services were in the community before they issued the community treatment order. We were trying to put some accountability in it. We are trying to develop the services and the implementation, recognizing that there needs to be some consultation with the local governance structure of the district health councils etc. It's not meant as a slight; I'm conscious of the time, however.

**The Chair:** We're at page 66, Mr Clark.

**Mr Clark:** I move that clause 35(3)(d.1) of the Mental Health Act, as set out in section 15 of the bill, be amended by striking out "care or treatment" and substituting "treatment or care and supervision."

It's just the consistency of language again.

**The Chair:** Any further comments? Seeing none, all those in favour of the amendment? Opposed, if any? The amendment is carried.

Shall section 15, as amended, carry? Carried.

That takes us to number 67.

**Mr Clark:** I move that subsection 35.1(2) of the Mental Health Act, as set out in section 16 of the bill, be amended,

(a) by striking out "care or treatment" and substituting "treatment or care and supervision"; and

(b) by striking out "caring for or treating the person" and substituting "treating, caring for and supervising the person."

Again, it's consistency of language.

**The Chair:** Any comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? Carried.

Number 68.

**Mr Clark:** I move that subsection 35.1(3) of the Mental Health Act, as set out in section 16 of the bill, be struck out and the following substituted:

"Disclosure

"(3) Except as provided in subsection (1), no person shall disclose the fact that a person is being considered for or is subject to a community treatment order without the consent of the person or the person's substitute decision-maker.

"Definition

"(4) In this section,

"'regulated health profession' means a health profession set out in schedule 1 of Regulated Health Professions Act, 1991."

This was an item that was recommended by both the Liberal and the NDP members during committee hearings.

**Ms Lankin:** Just a question: Did the ministry follow up on my suggestion to contact the privacy commissioner

and have the privacy commissioner's office comment on this?

**Ms Schell:** No, I haven't.

**Ms Lankin:** So we're about to pass a section on which we don't know whether there's a concern. I think we have to go ahead because we are likely to finish tonight; this won't be held over. I have raised this issue with the privacy commissioner, if only because I attended an event where she was the key speaker; and this was very recently, so there hasn't been the time. She was going to check to see if the ministry had contacted—I was under the assumption that that would be done, that her advice would be sought. Do we have any assurance from the privacy division of the Ministry of Health that this in fact takes in those community mental health services that currently aren't covered under any privacy legislation?

**Ms Schell:** I'd be happy to try and respond to that. First, I believe this motion is before you tonight specifically to respond to the concerns we heard with respect to ensuring that a person who might even be considered for a CTO has control over disclosure of that information, or that the person's substitute does. We have regulation-making authority here with respect to the information related to a CTO. I believe it's the government's intention to ensure that there are appropriate regulations in place. I believe the drafting of this covers everybody who might have this information. It does say "no person," and the intention was to catch people—"catch people" sounds a little bit pejorative, but the intention was to include people who are not subject to some other statutory duty, so non-regulated health professionals. That's why the language of "no person" was used.

**Ms Lankin:** Just a subsequent inquiry: The concern, as I had raised it at the time, was with respect to subsection 35.1(2), "Sharing of information," which reads, "Despite any other act or the regulations made under any other act, a member of a regulated health profession acting within the scope of practice of his or her profession or a member of the Ontario College of Social Workers and Social Service Workers or any other person named in a community treatment plan as participating in the care or treatment of a person who is subject to"—you may want to add "or supervision" there; you missed that one—"the order may share information with each other relating to the person's mental or physical condition for the purpose of caring for or treating the person in accordance with the plan."

My concern was that there are elements of the individuals who are contemplated within that in an Ontario psychiatric hospital who would, for example, fall under privacy laws. There are provisions within regulated health professions that guide the conduct of what a health professional may or may not do or disclose. Here we're saying that despite any of that these people can talk to each other and we include others named in a community treatment order, which includes a whole range of people in community mental health agencies and other commun-



ity service providers who have no legislative requirements. They may have some work-related code of conduct, but there's no legislative requirement with respect to privacy protection.

The concern I raised was specifically about the sharing of that kind of information with people who are not covered in any way by legislation guaranteeing privacy and protection, and that there be a clause that imposes that duty on them. The clause that we have here indicates simply that "no person shall disclose the fact that a person is being considered for or is subject to a community treatment order."

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That may be useful in and of itself; it's not something that I thought of. It certainly brings out the possibility of discrimination against a person if someone out there knows that they're under a community treatment order. I'm talking about the sharing of personal medical mental health information among health care providers and service providers in the community who are not subject to any kind of privacy legislation that guarantees that they will respect the private medical information of an individual. Despite any other act or any other regulation made under any other act, we are ordering people to violate privacy with respect to medical information by releasing it to people outside of the realm of protective legislation. I have grave concerns about that, and I do not believe the language that is here actually addresses this concern. Although this is a useful provision that's being put forward, it does not address the concern that I raised.

**Mr Clark:** The intention was to address it here. The ministry is also now having to deal with the broader issue, the protection of privacy for health records for all, and we are. That's going to be a huge one. I've been informed this is apparently coming my way now.

**The Chair:** Congratulations.

**Mr Clark:** I've already thought of that; I'm being punished again.

I hear your concern. My bigger concern in your wishing that this was in here was to provide some needed protection for the patient. On the other side of the coin, we've got health care providers who are arguing, "We need to be able to share information." So we're back to that balance again that we've been struggling with all the way through. So that's the issue, and I've raised it already with the ministry, in terms of how do we deal with the protection of privacy for health care for all patients? These doctors are raising this during the consultations, at all the consultations, in terms of sharing information back and forth. They feel that it's inhibited even though they have the same patient.

**Mrs McLeod:** I appreciate the intention of the amendment was to strengthen the privacy protection, but since it says "except as provided in subsection (1)," it seems to me that the intention is lost because subsection (1) is the operative clause, and that opens it up without any restrictions at all. My particular concern in that section is that it says "despite any other act or the regulations made under any other act."

Knowing that you're about to undertake a review of the privacy provisions for other health care situations, I would be concerned that whatever you do with it is still not going to—this act precludes people with mental illness from falling under the other protection. I wonder why it's necessary to put "despite any other act." I understand why you might put it in, because there is the privacy act. But that's really sweeping language: "despite any other act, or the relations made under any other act."

**Ms Schell:** With the greatest respect, one thing that's being missed in this dialogue is the language of 35.1(1) and (2). It's quite specific to the limited purpose of sharing the information. There isn't any authorization here that's given by the language of "despite any other act or the regulations" that opens up the disclosure at large. It's for the purpose of implementing the community treatment plan. Since we're looking at 35.1(2), the intent of this language here is to deal with situations where regulated health professionals, in particular under their specific statutes, cannot disclose information about services that they've provided to an individual.

So, with the very greatest respect, I think that modifying language does cover off, perhaps—I hope—some of your concerns about how widely information could be shared. In addition to that, we've built in this duty of confidentiality. I've already mentioned that we have reg-making authority here that could more specifically address that smaller group of unregulated people who might have some involvement here.

**Ms Lankin:** Using your language, with the greatest of respect, the provision of sharing of information, both consultation being permitted under (1) and sharing of information under (2), absolutely—you're right—it gets at regulated health professionals who are prohibited by their colleges from speaking to another regulated health professional about a client without the client's consent. That's very clear.

I had a person in my office the other day with a complaint before one of the professional colleges. One of the bases there is that this professional picked up the phone, called another and later said that he had consent and couldn't provide the documentation because consent hadn't been given. So you are allowing for that to happen.

What you miss in your explanation is that you're allowing for that information to be shared with people in service agencies in the community who have no requirement on them to keep that information private. So it's one thing to say that it's for the purposes only of the CTO and that the regulated health professionals can't go any further because you're only giving them the ability to talk for the purpose of a CTO. You're right, they still have the legislation or their professional college or whatever that dictates the prohibition on sharing of information. But you have stepped outside the regime of any protection by requiring that information be shared with community agencies and service providers that have no protective legislation, no requirement on them at all, to maintain confidentiality about personal medical mental health information.



The provision that you put in here is simply that they can't disclose the fact that a person is under consideration or is on a CTO. That does not deal with the details of personal medical information which they will be given access to by virtue of this provision, compelling a sharing of information here, and no legislative requirement on them to keep that private.

I can't believe that the privacy commissioner, in looking at this, would actually sanction this. Someone may want to get on the phone and allow us to figure out how to deal with this, because I think this is a significant problem. I don't think you can pass it. If you want to deal with it at some point in the future with respect to the health information privacy and strike these sections, fine. Or if you want to amend this by only making reference to regulated health professionals and delete all references to service providers or community agencies, so that you are not compelling information to be shared there, then I think we could proceed at this point in time and try to fix it in the long run thereafter.

But right now, I believe you are setting up a situation where this information is going to be provided to individuals in the community who have no obligation to keep the information private, and the regulation-making power doesn't address this specific circumstance that you've set out in this clause.

**Mr Sharpe:** This is an issue I've worked on also for many years.

**Interjection:** Have you got a story?

**Mr Sharpe:** No, except for the attempts to have a broad-based health information statute for all health information no matter where found. I think the issue you're raising deals with second-hand disclosures of information by people who may not be under other constraints that would impact their ability to practise if they improperly breached the disclosure concerns. There may be employment consequences, I suppose, as part of the job in the agency, or maybe not.

It's true that we are and have been working for some time on a personal health information protection act and have consulted the privacy commission in that regard, and they've provided very helpful comments. The only way to address the concern would probably be to put a provision in here that says, "Anyone who receives information in the course of a need-to-know basis where they have to have the information to assist in providing the care necessary is under an obligation to keep that information confidential and private."

**Ms Lankin:** That's what I was hoping for and what I thought was going to be drafted and brought forward. What is here is useful but it misses that mark. That's the clause we need.

**The Chair:** Any further comments?

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**Ms Lankin:** May I ask, Mr Clark, what your intention is? Could we ask counsel, while we continue, to step out and try to draft that particular clause to ensure that this information is protected?

**Mr Clark:** At this point, as I read it, the identification that says "no person" seems all-encompassing to me. I understand your concerns—

**Ms Lankin:** No, Mr Clark, may I please? It says "no person"—read on.

**Mr Clark:** If I might actually be able to finish a statement—

**Ms Lankin:** But look at what it says "no person" can't do. Please, just look at what it says.

**Mr Clark:** Ms Lankin, I have. We have to disagree.

**Ms Lankin:** Are you telling me that this language, in your opinion, provides that no person shall disclose any personal medical information that they may receive from a regulated health—

**Mr Clark:** I didn't state that. I stated, as it reads, "no person shall disclose the fact that a person is being considered for or is subject to a community treatment order without the consent of the person or the person's substitute decision-maker."

This issue came about as a direct result of physicians who want to share information back and forth. We're also trying to deal with the fact that there are other people who do not fall under the Regulated Health Professions Act. That's why we put this information in here. I am confident that, at this particular point in time, this does deal with the issue and we will have to deal with it in more detail for the entire Ministry of Health at a later date, which we are now in the process of starting.

**Ms Lankin:** I'm actually not prepared to leave this at this point in time, because the clause that's before us prohibits an individual saying that someone is considered for or subject to a community treatment order. The clauses in the legislation allow for regulated health professionals, who have requirements in terms of protecting privacy, to share information with each other and to share information with service providers and community agencies who have absolutely no restriction on what goes on with that information once they receive it.

By virtue of passing these sections, you are allowing for private medical information to be given outside of the realm of regulated health professionals, where it is now protected, into the hands of individuals in the community who have no obligation to protect it—and I understand the need for people to be able to share information—without putting a clause in there that prohibits the sharing of that information or revealing that information outside of those service providers or community agencies that are participating in the care of a patient who is subject to a community treatment order. Without that provision, you are ordering a regime which allows personal, private medical information to get into public hands.

I don't think you want to be doing that, with a lot of respect. I know it's getting late and we're tired, but I don't think that's what the government wants to be doing. I don't think you'll like the response from the privacy commissioner. You might want to remember Bill 26 and what happened with the response from the privacy commissioner where you stepped over the line. I think allowing counsel to find five minutes to draft the one



sentence that it takes to fix this would be a worthwhile investment.

**Mrs McLeod:** It seems to me there is an easy resolution of this. The suggestion Mr Sharpe has made protects what you needed to achieve in terms of allowing a specialist to share information for the community treatment plan and allows that to be brought in to include non-health professionals.

**Mr Clark:** We'll stand it down for a moment, please.

**The Chair:** Mrs McLeod informs me that she is ready to go with a revised number 63.

**Mrs McLeod:** My understanding is that all parties have agreed to this, so it's a matter of reading it into the record and taking a vote.

**The Chair:** First you must withdraw your original motion.

**Mrs McLeod:** I withdraw my original—

**Mr Clark:** I'm sorry, I don't even know where we are.

**The Chair:** We're at number 63.

**Mrs McLeod:** We agreed upon the wording on the review, so I will withdraw the original amendment and propose the following.

I move that section 14 of the bill be amended by adding the following section to the Mental Health Act (after section 33.8 of that act):

"Review

"33.9(1) The minister shall establish a process to review the following matters:

"1. The reasons that community treatment orders were or were not used during the review period.

"2. The effectiveness of community treatment orders during the review period.

"3. Methods used to evaluate the outcome of any treatment used under community treatment orders.

"First review

"(1.1) The first review must be undertaken during the third year after the date on which subsection 33.1(1) comes into force;

"(2) A review must be completed every five years.

"Report

"(3) The minister shall make available to the public for inspection the written report of the person conducting each review."

**Mrs Munro:** In trying to follow along, it seemed to me that the word "thereafter" was left out after the "five years," in the second sentence that you read.

**Mrs McLeod:** I'm reading what legislative counsel has put in front of me. Sorry, I'm not seeing "thereafter."

**Mrs Munro:** No. That's why I'm asking, whether it should be there.

**Mr Clark:** It was redrafted.

**Ms Schell:** I think the concern that's being raised here is that there's a review that is undertaken within the third year and then a review five years after that. I share your concern. The wording I heard read was that it would be three years and then two years later.

**Mrs McLeod:** I'm sorry. It is there and I went right through as opposed to reading,

"Subsequent reviews

"(2) A review must be completed every five years...."

*Interjection.*

**Mrs McLeod:** It says, "subsequent reviews," which I think is the same as "thereafter."

**Mrs Munro:** That's fine.

**The Chair:** For the record, it was Mr Patten who reintroduced the motion.

**Mrs McLeod:** I'm sorry.

**The Chair:** That's OK. It's my error. Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Carried.

Ms Lankin, you indicated you had held down 62.

**Ms Lankin:** The amendment on 62. In light of the passage of the amended motion before us, I will withdraw.

**The Chair:** Number 62 is withdrawn.

Are there any amendments to sections 17 through 20? Seeing none, shall sections 17 through 20 carry? Sections 17 through 20 are carried.

Number 69, Ms Lankin.

**Ms Lankin:** I move that subsection 39.1(4) of the Mental Health Act, as set out in section 21 of the bill, be amended by inserting "and on the occasion of every second renewal thereafter" after "for the second time."

Subsection 39(1) of the act, as set out in the bill, reads, "an involuntary patient or any person"—am I in the right section? No. I'm looking for subsection (4). Sorry.

**The Chair:** If it's of any assistance, Ms Lankin, number 70 seems to embrace your suggestion. I'm at a loss to understand why yours actually came first.

**Ms Lankin:** Because mine is simply the change in the words. The government motion reprinted the whole section. It's just a stylistic approach.

I'm sorry, but if you could just give me a moment, I want to make sure that I'm actually looking at the right page in the bill. Starting at the beginning, it's actually at the bottom.

As I understand it, the government motion will accomplish this, but so will my amendment. Perhaps I could ask counsel if there is anything different in the government motion.

**Ms Schell:** Actually, when you flagged this problem with subsection (4), which was a drafting error and immediately became apparent, we took another look at 39.1. We haven't just repeated what is already existing in the bill; we've added a number of things which we hope will significantly improve this section.

Subsection (4) at page 70 addresses your concern that there isn't a specific requirement for the physician to give notice to the board on the occasion of each second renewal.

**Ms Lankin:** OK, I see that.

**Ms Schell:** Then we looked at section 39 of the Mental Health Act, which is the section that sets out the rights to apply, and procedural rules with respect to involuntary commitment. There are rules in there that call for automatic and mandatory review, and we added those provisions, or very similar provisions, to 39.1.



Subsection (5) would indicate that the person's entitlement to an automatic review cannot be waived, or a purported waiver is a nullity. The intent there is that if somebody is perhaps badgered into not going to the board, that doesn't count; the board goes ahead anyway.

Subsection (6) adds the board's specific jurisdiction to confirm or revoke—pardon me—to hold the hearing promptly.

Subsection (7) adds the board's jurisdiction to confirm or revoke.

Subsection (8) indicates that the board's decision applies to the CTO that is in force immediately before the making of the order.

Subsection (9) adds the parties.

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Subsection (10) might be a little bit inexplicable without referring back to the legislation, but what that does is it adds all the quorum requirements for the board, and the procedural and appeal rules that apply to involuntary status hearings are all brought in. The distinction in terms of quorum requirements is that there are a lot of instances under the Health Care Consent Act where a single member of the board can decide matters, but for involuntary status it always has to be at least a three-member panel, including a lawyer, a psychiatrist and a community member. So all of this reconsideration was triggered by your very astute observation that subsection (4) doesn't do what we intended, so we've added that.

**Ms Lankin:** It's not that late that you have to butter me up, Diana.

**Ms Schell:** I'm not sure if it's butter or what makes the roses grow, Frances.

**Ms Lankin:** Exactly. I was being polite.

May I indicate, Mr Chair, that in light of my concern being addressed by the government motion, I withdraw my amendment and indicate my support for the government's motion.

**The Chair:** Number 69 has been withdrawn. Mr Clark, could you read into the record number 70, please.

**Mr Clark:** I move that subsection 39.1(4) of the Mental Health Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Notice to board

"(4) When a physician renews a community treatment order for the second time and on the occasion of every second renewal thereafter, he or she shall give notice of the renewal to the board in the approved form.

"Waiver

"(5) A waiver by the person who is subject to the community treatment order of an application or of the right to an application mentioned in subsection (3) is a nullity.

"Review of community treatment order

"(6) On the hearing of an application, the board shall promptly review whether or not the criteria for issuing or renewing the community treatment order set out in subsection 33.1(2) are met at the time of the hearing of the application.

"Confirm or revoke order

"(7) The board may, by order, confirm the issuance or renewal of the community treatment order if it determines that the criteria mentioned in subsection (6) are met at the time of the hearing, but, if the board determines that those criteria are not met, it shall revoke the community treatment order.

"Application of order

"(8) An order of the board under subsection (7) applies to the community treatment order in force immediately before the making of the board's order.

"Parties

"(9) The physician who issues or renews the community treatment order, the person subject to it or any other person who has required the hearing and such other persons as the board may specify are parties to the hearing before the board.

"Procedure

"(10) Subsections 39(5.1)(6) and (7) apply to an application under this section with necessary modifications."

**The Chair:** Are there any further comments on this section? Seeing none, I'll put the question. All those in favour of the amendment? Opposed, if any? The amendment is carried.

Shall section 21, as amended, carry? Section 21, as amended, is carried.

Is there any debate on or amendments to sections 22 through 27? Seeing none, shall sections 22 through 27 carry? Sections 22 through 27 are carried.

**Mr Clark:** Mr Chair, there's a replacement for item number 68. If I can read it in, there's been an agreed-upon amendment. It comes from our side, which doesn't imply anything. If I may just read the amendment that's being suggested, that we include,

"Prohibition

"(3.1) a person who receives personal information under subsection (1) or (2) shall not disclose that information except in accordance with this section."

**The Chair:** In the interest of time, does the committee allow Mr Clark to simply add that to his original motion rather than withdraw and reread it? Fine. If everyone is agreed to that amendment to the amendment, I'll put the question on the now-amended amendment. All those in favour of the amendment carrying? Opposed, if any? Number 68 is carried.

Because of that, shall section 16, as amended, carry? Section 16, as amended, is carried.

We'll go back to number 72, a Liberal motion, Mrs McLeod.

**Mrs McLeod:** I move that the bill be amended by adding the following section:

"27.1 The Act is amended by adding the following part:

"PART III.1 Mental Health Advocacy Office

"Mental Health Advocacy Office

"61.1(1) The Mental Health Advocacy Office is hereby established as a corporation without share capital.

"Composition



"(2) The Office is composed of such persons as the Lieutenant Governor in Council may appoint.

"Objects

"(3) The following are the objects of the office:

"To coordinate and administer a system of advocacy and rights protection for persons who are receiving or seeking psychiatric or other mental health services.

"2. To advise the Minister about matters and issues concerning the interests of those persons.

"3. To exercise the rights and perform the duties assigned to the office under this or any other act."

In discussion with Mr Patten and Ms Lankin, recognizing that there is an NDP motion immediately following this that also seeks to establish a mental health advocacy office, and recognizing that this is a point at which we depart from practising the art of the possible, I suspect, I nevertheless feel really strongly about the establishment of a mental health advocacy office. I believe this is an opportunity to amend the Mental Health Act to provide, for the first time ever, an independent body which can advocate for those with mental illness and ensure that there is advice being given to the minister on the needs of those who require treatment for mental illness. So we put this forward. I will acknowledge quite shamelessly that I have stolen it from the Psychiatric Patient Advocate Office and I appreciate legislative counsel having put it into appropriate form, but with all of that, I and Mr Patten would be prepared to withdraw the amendment and consider the NDP amendment which is to come next and keep our discussion on one amendment.

**The Chair:** Amendment 72 is withdrawn. Ms Lankin, that takes us to your amendment, page 74.

**Ms Lankin:** I move that the bill be amended by adding the following section:

"27.1 The act is amended by adding the following part:

"Part III.1

"Office of Mental Health Advocacy

"61. There is hereby established the Office of Mental Health Advocacy as an office of the ministry.

"Objects

"62. The duties of the office are,

"(a) to advise the minister on matters and issues concerning the interests of persons with mental disorders;

"(b) to conduct a systemic review of the mental health system and its ability to meet the needs of those who receive or seek approved services, including,

"(i) a review of the adequacy of service delivery,

"(ii) a review of the effectiveness of the implementation of services,

"(iii) a review of community treatment orders and their effectiveness, and

"(iv) a review of the use or lack of use of community resources.

"(c) to report the findings of the systemic review to the ministry in the form of an annual report and to the Legislative Assembly in the form of an annual public report;

"(d) to conduct a thorough review of the provisions of the act relating to community treatment orders and community treatment plans five years after they are proclaimed; and

"(e) to perform any duties and functions conferred on the office under this act, the regulations made under it or under any other act and the regulations made under it."

Before I speak to the overall rationale, I understand there would need to be a minor amendment, given that we have passed the review provisions with timelines of the first review being three years and then five years after that. That would not be consistent with the provision "to conduct a thorough review of the provisions of the act relating to community treatment orders and community treatment plans five years after they are proclaimed." That section could be deleted and (e) could be renumbered (d). That still would ensure that the Office of Mental Health Advocacy is the office that actually conducts the review that's been set out in the other section that has been earlier passed.

Let me make it very clear that I am not looking to seek to re-establish a different or somehow re-jigged Psychiatric Patient Advocate Office. I believe the role of that office is an important and valued one in the system. It remains independent in its structure as a corporation without share capital. It is independent in its ability, through a memorandum of agreement with the ministry, to provide advice and to provide criticism where necessary of ministry-provided services. It provides a valuable role as a patient advocate and should remain and should do that. I understand that, as we seek changes in services being provided in psychiatric facilities to shift to psychiatric boards of general hospitals, there is a process in place in which the protections and the role of the patient advocate office is being imported or exported along with the treatment officers for those patients.

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What I seek to establish here is an office that has responsibility for a systemic review of the mental health system. It is akin to the office of the child advocate, which exists under Ministry of Community and Social Services legislation and within the purview of that ministry. It is an office which hears concerns, which acts upon them to investigate and which looks at the matters raised in a systemic way.

One of the things we know, although there have been many reports and many plans for reform of mental health—as I cited earlier, mental health often remains the poor cousin in the health system. There is a need for a systemic advocate. As we see a shift in where resources are being provided, where treatment is being provided and where we have interaction between the facility and that community, there is a need for someone to talk about the integration of those services, a seamless system and the way we are or are not successfully implementing those.

One of the things we are aware of is that there is a large difference of opinion in the mental health field about resource allocation between many people who are



facility-based and many people who are community-based. That actually reflected itself in some ways in some of the polarized views about this legislation. There is a need at some point, placed within the ministry, for someone who is not viewing the polarized world but who is viewing the whole world of the patient and understanding the system as it relates to the patient and as it meets the patient's needs.

I believe very strongly that the ministry will be helped by this. The minister will be helped by having this kind of systemic review, advice and public reporting that allow a minister to argue at the cabinet table and at treasury board the need to maintain resource allocations and move towards greater integration of facility-based and community-based services.

If there is objection to this, I would like to understand what that objection is. There is not a huge resource allocation here. If you look at the office of the child advocate, it is very sparse in terms of what has been put there. This is not an intent to recreate the advocacy commission, which the government I was part of brought in and believed was important both in terms of individual advocacy and systemic advocacy. That was rejected by this government. I haven't tried to recreate that. I'm talking about an individual office that is charged with what I think is a very important responsibility.

I've indicated in discussions during the hearings that this does exist in other jurisdictions. There are some US jurisdictions where this role has been formalized through legislation through state regulation, and in British Columbia this position has been created, implemented and is underway, and they are now looking at the actual legislative amendment required to give it legislative statute authority.

To me, this is a necessary compendium to the legislative initiatives we have before us to ensure that broadening provisions of involuntary committal and bringing in new community committal criteria are implemented in a system where we are working together between the facility- and the community-based and where the polarities that now exist do not get in the way of developing a seamless system that meets the whole needs of the patient. I hope that if there is not support from the government, I will be able to hear some of the reasons this provision may be rejected and be able to respond to those.

**Mr Clark:** Very quickly, we're currently working with the PPAO in terms of what their mandate is now going to be, considering the fact that the entire system is changing. We're divesting ourselves of provincial psychiatric hospitals. There are going to be responsibilities for general psychiatric hospitals. I've been on the phone a number of times with Vahe, trying to get an understanding of what their role is going to be in terms of community treatment orders. So there is a review that is currently underway with the provincial psychiatric advocacy office, and it's still ongoing and hasn't crystallized. So don't take by my opposing your motion that we're opposed to what you're proposing. I'm stating very

clearly and on the record that we are currently reviewing that entire process. There is an advocate's office there, and we're trying to figure out how that mandate is going to fit with everything we're doing in terms of developing that continuum of care for psychiatric facilities in the community. That's what we're trying to accomplish.

**Ms Lankin:** Can you go so far as to give a commitment at this time that the result of that review will be to establish a responsibility for systemic advocacy as opposed to simply understanding how the role of patients' rights advocacy, which is the current mandate of that office, is continued under the new model of service delivery?

**Mr Clark:** I can go so far as to say that it's been under discussion with Vahe. I don't know what the final outcome is going to be, because it's an ongoing work in progress. It has been under discussion; however, I don't know how it's all going to shake out. My concern is that we end up creating a duplicate process here.

**Mrs McLeod:** I'm glad to see you working with the PPAO, because that was brought forward to the committee: the recommendation that there be a mental health advocacy office and that it have a broader role in terms of advice to the minister. In fact, their recommendations included what was in our amendment, which was that that office would coordinate the work of the psychiatric patient advocate. I think that's absolutely essential, and I'm not going to take the time of the committee this evening to repeat the speech I made in the House, but this has been one of my very real concerns. We haven't opened the Mental Health Act since 1972. We've had all kinds of studies from all three governments, and inevitably mental health ends up on the back burner. I think the reason it does is because the people who need the support of the mental health system are not in a position to advocate strongly for themselves, and that's not as true in many other areas of the health care system, except maybe for long-term care.

I think we need to have a way of ensuring that not just this government but all future governments, because we've all been at fault with this—that there is an independent body that will keep the issues of mental health and the needs of those with mental illness constantly in front of us. So I hope that if this can't be passed tonight—and I think the intent is not binding on the government other than to have that kind of advocacy in place. If it can't be passed tonight, I trust there will be a broadening of the PPAO so that it's not just about the rights of individuals who are in the system but about the system itself.

**Ms Lankin:** Let me say I appreciate that the review is underway, and I hope that is successful in ensuring that ongoing patient advocacy takes place by a group that is very well experienced. To my way of thinking, it is necessary at this point in time to divide the issue of patient advocacy from systemic advocacy. I believe it is necessary to have systemic advocacy within the legislation and an office that is mandated by legislation to have public reports to the Legislature. I believe it gives it



the import of positions like the Environmental Commissioner and others who report, and the office of the child advocate, who is not an officer of the Legislature but whose reports are taken seriously by the media, the public and legislators alike.

I believe that just by virtue of the way the government has dismissed the concerns the patient advocacy office has brought forward with respect to the actual amendments now in front of us, that indicates there is not the same level of response accorded to individuals who are involved in individual advocacy. It's something that has been referred to by people speaking to this bill on second reading as a group of activists and not families, and therefore people who should not be listened to.

I want to stress that I believe this amendment stands alone for the provision of systemic advocacy. It is something that exists in other jurisdictions. It's been brought into law in British Columbia. The first report of the advocate there had quite an impact on the government, in terms of holding them accountable to previous commitments and bringing about changes in resource allocations. I think it could do the same thing here. I trust that this is an issue I will continue to return to in the future if it's not passed here tonight.

**The Chair:** Any further comment? Seeing none, I'll put the question.

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

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**The Chair:** That motion is lost.

I'm going to rule that the motion on page 76 is out of order. Unless I hear otherwise from the floor, we will move on to number 77.

**Mr Clark:** I move that clauses 81(1)(g.1) and (g.3)—

**The Chair:** Forgive me. I beg your pardon, Mr Clark, we missed one section.

Are there any amendments to section 28? Seeing none, shall section 28 carry? Carried.

I beg your pardon, Mr Clark. Could you resume?

**Mr Clark:** I move that clauses 81(1)(g.1) and (g.3) of the Mental Health Act, as set out in subsection 29(4) of the bill, be struck out and the following substituted:

"(g.1) respecting and governing community treatment orders, including the qualifications required for issuing such orders, additional duties of physicians who issue or renew such orders, additional duties of physicians who consent to an appointment under subsection 33.5(2) and additional duties of persons who agree to provide treatment or care and supervision under a community treatment plan;

"(g.3) designating persons or categories of persons who may agree to provide treatment or care and super-

vision under a community treatment plan under subsection 33.5(3) and prescribing the qualifications or requirements that a person must meet before he or she provides such treatment or care and supervision."

**The Chair:** Any comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed, if any? The amendment carries.

Shall section 29, as amended, carry? Section 29, as amended, is carried.

Are there any comments on or amendments to sections 30 through 45?

**Ms Lankin:** Could you wait a moment, please? Could I get some guidance? Are all those sections of the bill within the Mental Health Act being moved into the Health Care Consent Act?

**The Chair:** We're in the Health Care Consent Act now. Actually no, that's not true.

*Interjection.*

**The Chair:** Actually yes, we start at section 30.

**Ms Lankin:** I'm sorry, Mr Chair?

**The Chair:** Section 30 is the start of the Health Care Consent Act.

**Ms Lankin:** And you're requesting which sections?

**The Chair:** Sections 30 through 45, looking at the amendments that have been given to us.

**Ms Lankin:** There are provisions in there that I would like to speak to, to urge people to vote against certain sections—

**The Chair:** Is there a specific section?

**Ms Lankin:** Let me just find the section. I will want to speak to section 33 and—

**The Chair:** Are there any comments or amendments to sections 30 through 32? Seeing none, shall sections 30 through 32 carry? Sections 30 through 32 are carried.

Section 33. Any comments?

**Ms Lankin:** Yes, Mr Chair. Section 33(1) talks about individuals who are making an application to depart from prior capable wishes that an individual has made. Clause 33(1)(b) indicates that "the health practitioner who proposed the treatment may apply to the board to obtain permission for the substitute decision-maker to consent to the treatment despite the wish." You'll notice that clause (a) is the existing ability of the substitute decision-maker to "apply to the board to apply to the board for permission to consent to the treatment despite the wish." As I understand it, what's new here is the health practitioner being able to make that application.

I will repeat the concerns, or I will state that I have the same concerns with respect to a later provision that allows a care facility to apply to the board on behalf of the substitute decision-maker as well. I believe that the system that's there, that stands—the explanation that was given to me is that sometimes it's hard for a substitute decision-maker to go forward to the board and make the application, therefore a physician or a health practitioner should be able to do that on their behalf. If you're talking about seeking the right to depart from someone's prior capable wishes, I don't believe we should be doing anything to lessen the burden or the onus of making that



decision and seeking that kind of action. I urge that this section be voted down, because the provisions within the existing act allow for a substitute decision-maker to do this. That will remain. If we vote this section down, what we will be stopping is passing on new powers to a health practitioner to make that application.

**The Chair:** Any further comments? I'll put the question on section—

**Ms Lankin:** Could I ask ministry counsel why there is no support for this and the rationale for this clause?

**The Chair:** We haven't had the vote, so it would be a little unfair to ask the ministry staff whether or not the members of the committee will vote a certain way.

**Ms Lankin:** The ministry has put forward this clause, and I'm asking for the rationale for—

**The Chair:** I'm sorry. I thought you meant the support within the committee.

**Ms Lankin:** No.

**Ms Schell:** I'd be happy to address that. All this provision does is allow a health practitioner to bring the application to the board. The board can consider whether or not to give the substitute permission to depart from prior capable wishes. The substitute is not required to do so, but I draw to the member's attention the fact that the matters the board has to be satisfied about here in order to give the substitute permission are very onerous. They're set out in subsection 36(3) of the Health Care Consent Act. If I could read in part, the board has to be satisfied "that the incapable person, if capable, would probably give consent because the likely result of the treatment is significantly better than would have been anticipated in comparable circumstances at the time the wish was expressed." The effect of this provision is that the substitute can be told of that determination by the board, but there's no requirement that the substitute go ahead and consent in accordance with the board's determination.

**The Chair:** I've been watching, and we've now had permission in the House to continue our sitting.

Any further comments? Seeing none, I'll put the question on section 33. Shall section 33 carry? Section 33 is carried.

Are there any comments or amendments on sections 34 to 45?

**Ms Lankin:** Yes, I will have comments on section 37.

**The Chair:** Any questions or amendments on sections 34 through 36? Seeing none, shall sections 34 through 36 carry? Sections 34 through 36 are carried.

Section 37.

**Ms Lankin:** Subsection 37(1) amends subsection 52(1) of the act. It strikes out a portion of a clause and substitutes the following:

"(1) A substitute decision-maker or the person responsible for authorizing admissions to a care facility may apply to the board for directions if the incapable person expressed a wish with respect to his or her admission to the care facility, but," and it carries on from there.

I feel more strongly about this than the last provision I raised. I agreed that in the last provision there is an opportunity for the substitute decision-maker to still determine whether or not to depart from the prior capable wishes. I won't repeat my objections; I still hold objections to that section. But in this section we're talking about where a person has expressed a desire or wish with respect to being admitted to a care facility. My concern here is allowing "the person responsible for authorizing admissions to a care facility." I believe I am correct that when I asked ministry counsel for a definition of "care facility" and we went back and looked, it included the rest and retirement home sector. That is an unregulated sector. Those of you who were in the House today know that this is an issue that I feel very strongly about and have been raising on an ongoing basis and asking for standards-of-care regulations. I believe the series of articles that we saw last October in the Toronto Star detailed the kind of abuse and neglect that is taking place in some parts of the unregulated rest and retirement home sector, a problem which has cropped up periodically over the decades whenever government has been in a situation of scarce resources to meet the needs of vulnerable seniors, which is the situation we're in now.

To allow people in that sector to have the right, on their own, dealing with what may be a vulnerable family desperately looking for a place to put a person, to seek to overturn prior capable wishes—I don't care how stringent the review board's criteria are, and I do recognize the important and viable work they do and how carefully they would consider such a request—but to give this kind of authority to that unregulated sector, given the litany of stories of abuse and neglect that exist, I can't comprehend that we would do that in this legislation.

I don't see it as a necessary piece of this legislation. It's not something that is at all part of the intent of the government with respect to the Mental Health Act, with respect to broadening involuntary committal criteria or with respect to creating community treatment orders. It was described to me by ministry counsel as a house-keeping, would-like-to-do type of amendment because it's been asked for by some people out in the sector there. I think it has not been widely consulted on. I think the impact of it has not been understood. I have spoken to some people in the seniors' advocacy field who were not made aware of this and who are horrified at the prospect, as horrified as I am. I believe that this provision should be defeated.

If the government does adequate consultation and comes forward with a rationale that they feel they can support, then it can come forward as an amendment to the Health Care Consent Act. It should not be contained and hidden in the context of this legislation. This is not part of, nor does it serve any purpose to, the main intent of this legislation.

Again, I would ask if Mr Clark would offer some response to those concerns.

**Mr Clark:** I'll defer to counsel.

**Ms Schell:** I recall your raising this question. I don't recall specifically telling you that these were unregulated



facilities. We did seek advice from long-term-care counsel at the ministry when you raised that question and she has provided an answer with respect to what the definition of "care facility" consists of. There is, of course, a definition in the Health Care Consent Act and I think maybe I can serve everybody's purposes best simply by reading her response to the concern that we were talking about, unregulated facilities.

She says, "Care facilities are defined under the Health Care Consent Act as including the following:

"(1) an approved charitable home for the aged, as defined in the Charitable Institutions Act;

"(2) a home or joint home, as defined in the Homes for the Aged and Rest Homes Act; and

"(3) a nursing home, as defined in the Nursing Homes Act.

"Admission to these care facilities is governed by the provisions of long-term-care facility legislation: the Charitable Institutions Act, the Homes for the Aged and Rest Homes Act and the Nursing Homes Act. Admission to these facilities is permitted only when authorized by a placement coordinator. The placement coordinator is designated by the Minister of Health and Long-Term Care. The current placement coordinators in the province are community care access centres (CCACs). The proposed amendments to the Health Care Consent Act would permit CCACs to apply to the Consent and Capacity Board," in this case, for clarification with respect to a person's prior capable wishes. That's the provision that Frances has referred to.

The note goes on to say: "The Homes for the Aged and Rest Homes Act governs long-term care facilities that are operated by municipalities. There are no privately operated facilities under this legislation. (Although the legislation also provides for the establishment of homes by the council of a band, there are currently no homes operated in this manner.)"

My understanding of this advice from counsel in our office is that these are regulated entities and that it's the CCACs that would be authorized by this provision to make the application.

**Ms Lankin:** Could I just ask for assurance? Could someone check the language in the Health Care Consent Act, because I have the Mental Health Act but not the Health Care Consent Act with me.

When we looked at it and we read that, I did put it to one of the other counsel and had agreement that it included the unregulated rest home sector. If it doesn't, I withdraw all my concerns. Those concerns are met, but that's based on ministry advice.

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**Ms Schell:** I apologize if this wasn't clarified before now. The definition of "care facility" does include, and this is in the Health Care Consent Act at 2.1(b), "a home or joint home as defined in the Homes for the Aged and Rest Homes Act." This is referred to here in the note I have and this is legislation that governs rest homes. So we only have entities under the definition of "care facility" that are subject to statutory provisions. That's the best way that I can put it.

**Ms Lankin:** I'm sorry but I need to ask for one more clarification, because there is confusing terminology with respect to rest homes. In the past, there have been some regulations for rest homes with respect to rent controls and other things applying to them, and I'm not sure if under the Homes for the Aged and Rest Homes Act that's the only provision that's there, because the retirement and rest home sector is not regulated with respect to standards of care.

What I need absolute assurance of is that anyone admitted to any home under those pieces of legislation, including a rest home, can only be admitted through the CCAC process and that the regulation of the rest home under the Homes for the Aged and Rest Homes Act is simply the application of the division of care from tenancy issues and rent control issues. The Lightman report is what I'm referring to.

**Ms Schell:** That's a very broad question. All I can say about that is the statute covers what it covers. I think that the term "rest home" and other kinds of accommodation—sometimes that language is used generically. The act says that these are entities that are covered by statutes. I've read the note that indicates who can make the application. All I can say is the statute covers what it covers and it's fairly clear here.

I see legislative counsel nodding. If she has some further comments on this that might help us out, that would be great.

**Ms Lankin:** Only because I'm trying to absorb it quickly, the note does indicate that anyone admitted to a home under any of those pieces of legislation is admitted through the CCAC. So there's no one who falls outside of that. That's what that note says?

**Ms Schell:** The note says that the provisions of the act only apply to these things that are defined as care facilities, and they're specifically referenced by these statutes. I'd be happy to give you a copy of the note. I'm not trying to obfuscate—

**Ms Lankin:** No, no. It would be nice to have a copy, but that note indicates that the admission policies of all of the homes under those statutes are governed by the CCACs. That's what the note says; that's all I'm asking.

**Ms Schell:** Yes.

**Ms Lankin:** Thank you. I just wanted clarity. It's late and it's hard to absorb it all. I appreciate that; that satisfies my concern.

**The Chair:** Any further comments?

Seeing none, shall section 37 carry? Carried. Section 37 is carried.

Are there any comments on or amendments to sections 38 through 45?

Seeing none, shall sections 38 through 45 carry? Carried. Sections 38 through 45 are carried.

The next amendment up is number 78, Mr Clark.

**Mr Clark:** I move that the bill be amended by adding the following section:

"45.1 The act is amended by adding the following section:

"Immunity



"71.1 No proceeding for damages shall be commenced against the board, a member, employee or agent of the board or anyone acting under the authority of the chair of the board for any act done in good faith in the performance or intended performance of the person's duty or for any alleged neglect or default in the performance in good faith of the person's duty."

This came out as a result of a recommendation from the ministry's agency liaison office, and I think it pretty well speaks for itself.

**The Chair:** Any comments?

Seeing none, all those in favour of the amendment? Opposed? The amendment is carried.

Section 46: Are there any comments on or amendments to section 46.

Seeing none, shall section 46 carry? Section 46 is carried.

The next amendment is an NDP amendment. Ms Lankin.

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**Ms Lankin:** I move that the bill be amended by adding the following section:

"45.1 The act is amended by adding the following section:

"Power of attorney for personal care

"86. The public guardian and trustee shall accept a power of attorney for personal care where named as the attorney."

One of the concerns that the whole community treatment order provision raises is new powers and rights and obligations for substitute decision-makers. Substitute decision-makers are defined in a certain way in terms of who has the right of substitute decision. Some individuals do not have relationships with the statutory list of substitute decision-makers that are there that would allow them to feel comfortable with those individuals taking over decision-making power for them should they become incapacitated. In such cases, it is possible for an individual to name a power of attorney for personal care. That's normally a consensual thing. You seek to obtain an agreement from a person to do that, the forms are filled out, that person then is able to make decisions for you on your behalf if you become incapable with respect to your personal care.

One of the concerns I have that has happened and has been raised in the community that we are dealing with here are individuals who, for whatever reason, don't have anyone else to go to, to seek them to become their power of attorney to take this on, individuals who have lived on the street perhaps for a while or who have become geographically or emotionally removed from their family and do not accept that those individuals in the family could become the substitute decision-maker but want to go to an individual who would do that.

Currently, the office of the public guardian and trustee has the authority and the ability to take this on, but as a matter of course for a number of years, due to scarcity of resources—and I understand it completely—they have routinely rejected this, until most recently. There are a

couple of cases where now they have actually taken on this responsibility, but they are in the minority and they do not meet the need that is out there. It would be impossible for the office to meet that need without the government providing the resources necessary.

We believe it is absolutely crucial that people have an alternative. Now that we are giving over decision-making about such things as committal orders in a community to substitute decision-makers, they must have the ability, if they have no confidence in the statutorily listed group of substitute decision-makers, to appoint someone. Given the population we're talking about, there may be many significant cases where there is no other individual, other than going to the office of the public guardian and trustee. We can no longer rely on the simple authority that that office may take it on. It must be something that we require of them when asked.

There are other requirements placed on this office as a result of this legislation. They have a special unit. There will be training. They will become proficient in the issues around community treatment orders. We believe that it is necessary for these patients to have a guaranteed alternative where they can go to a power of attorney for personal care.

**Mr Clark:** Just some clarification here, Chair. I did not talk to the power of attorney, the PGT. I didn't talk to them. As I understand it, they're governed under the Substitute Decisions Act, so I'm not sure whether this is actually in order.

**Ms Lankin:** It would be preferable to do it under the Substitute Decisions Act, but if I had written it that way, it would have been out of order since that section is not opened up. So one is constrained by the art of the possible here, Mr Clark. I think that down the road, it may be something that you may want to address that way, but right now we're bringing in community treatment orders that create a new situation and we need to give people this protection so that they are not left without an alternative to an unsatisfactory list of substitute decision-makers under that legislation, an alienated list, and not left to the goodwill of the guardian and trustee's office or, more to the point, being unavailable resources for them to take on this kind of workload, that it is in fact a mandated workload and therefore a necessary resource for government.

**The Chair:** Thank you. Any further comments?

Seeing none, shall the amendment carry? All those in favour?

**Ms Lankin:** Could I have a recorded vote, please?

**Ayes**

Lankin, McLeod, Patten.

**Nays**

Clark, Dunlop, Munro, Wood.

**The Chair:** The motion is lost.



The Legislative counsel advises me that actually we should be considering the Liberal motion next that you'll find at page 81.

**Mr Patten:** I move that section 47 of the bill be struck out and the following substituted:

"Commencement

"47(1) Except as provided in subsection (2), this Act comes into force on the day it receives royal assent.

"Same, provisions re community treatment orders

"(2) Subsections 1(2) and (9), sections 14, 15, 16 and 21, subsections 29(4) and (5) and section 30 of this act come into force on a day"—I won't repeat all those—"to be named by proclamation of the Lieutenant Governor, which day shall not be earlier than the day on which the Minister of Health and Long-Term care announces in the Legislative Assembly that an implementation plan relating to these provisions is in place."

We say that because we had some discussion about this and I believe that there was some acknowledgement on the government's part that yes, there was a need for an implementation plan. That can be done with the detail subsequently, but to make this announcement—that would be the time in which the review would kick in as the point at which the implementation plan is in fact in place.

This was recommended by the Association of General Hospital Psychiatric Services, psychiatric practitioners, psychiatrists. They felt very strongly that an implementation plan should be put forward.

We've talked about the method of evaluation and education to key stakeholders etc, that the implementation plan would be a compendium along with the bill but the government would not proceed until the implementation plan had been developed.

**Mr Clark:** It's obvious from the fact perhaps that the government has a motion in terms of setting this in force for December 1, 2000, which we'll be dealing with later on. The government's intention is to make it very clear that they're serious about this and moving forward with this. The date is set in stone and the implementation—we have to get on with this. The concern is that it's hanging out here until the implementation plan is in place. There's some urgency in getting on with the bill and making sure that the education and implementation process is on the way. That's why they set the date, that's all.

**Mr Patten:** One of the reasons for the implementation plan was that, given the vastness of Ontario, it may be all right to implement this. One suggestion was even that there may be signoffs from the nine different regional offices that say, "OK, we're ready," and the next one says, "We're not quite ready; we need five or six months," another one says, "Look, we're ready in two months," this kind of thing. In other words, if that's what an implementation plan would do, in the absence of that, you apply this and then it's, "OK, everyone who feels they want to exercise their right, away they go."

**Mr Clark:** With respect, I wouldn't read into it that that's not going to be the case in terms of the implementation plan and the timing of when it's going to be

coming on line, what's going to happen. There will be a plan laid out, but the intention of the government is to make sure it is very clear in everyone's mind that they are moving ahead with it and the implementation plan will be released.

**Ms Lankin:** Just simply to say that we've heard from a number of witnesses about the need for the proper development of an implementation plan, from some of the people who are strongly supportive of this legislation, from some of the experts in the field of psychiatry, the community treatment program representative. None of them contemplated that this section of the legislation should be proclaimed by December of this year, that the education would be done or the resources would be in place. While I understand the government's desire to have an actual date as opposed to leaving it completely hanging, I think that is unacceptable. It may meet a communications objective on the part of the Premier's office in terms of the public safety aspect of this bill; it doesn't meet a good planning and implementation approach from the Ministry of Health and Long-Term Care, and I think the parliamentary assistant will find that as work begins on this. However, I suspect that that position will hold, so we may as well vote.

2020

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

**Mr Clark:** Number 80: I move that section 47 of the bill be struck out and the following substituted:

"Commencement

"47. This act comes into force on December 1, 2000."

**The Chair:** Any comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

I have to put in the record that because the amendment on page 82 is identical to number 81, it's out of order.

**Ms Lankin:** It's not out of order for that reason. It was out of order because it was defeated and it's identical.

**The Chair:** Yes.

**Ms Lankin:** I just want to make that clear: The amendment was perfectly in order. That's why I gave support to the original. The intent and the wording is exactly the same, and we've dealt with those.

**The Chair:** Exactly. We'll just say "not moved" on the clerk's record.

**Mrs McLeod:** I would just like to put on the record, because it may be the only opportunity I have before we get into the final debate about the deferred motions, that I do want to express appreciation to Laura Hopkins for having taken the amendments from both ourselves and the New Democrats and put them into legislative form in a very short time frame. She was extremely co-operative and made herself available at any time at all. We have to say thank you. It made it possible for this process to work.

**The Chair:** Thank you very much for your comments, Mrs McLeod.



With that, shall section 47, as amended, carry? Section 47, as amended, is carried.

We might as well polish off the next two while we're here.

**Clerk of the Committee (Mr Victor Kaczowski):** You can do 48, but you can't call the long title yet.

**The Chair:** All right, we'll do the next one while we're here.

Shall section 48, the short title of the bill, carry? Section 48 is carried.

That takes us back to the first of our deferred amendments, which was number 9.

**Mr Clark:** Might I suggest, Chair, that we look at 33 first?

**The Chair:** If that is the favour of the committee.

**Mr Clark:** Does everyone have this now?

**The Chair:** I'm pleased to do that. You should have a replacement number 33.

**Mr Clark:** you'll have to withdraw your original 33 and read this one into the record. Oh, it wasn't put. I beg your pardon. So we're starting from a clean slate.

**Mr Clark:** I move that subsection 33.1(1) of the Mental Health Act, as set out in section 14 of the bill, be struck out and the following substituted:

"Community treatment order

"(1) A physician may issue or renew a community treatment order with respect to a person for a purpose described in subsection (1.2) if the criteria set out in subsection (2) are met.

"Same

"(1.1) The community treatment order must be in the prescribed form.

"Purposes

"(1.2) The purpose of a community treatment order is to provide a person who suffers from a serious mental disorder with a comprehensive plan of community-based treatment or care and supervision that is less restrictive than being detained in a psychiatric facility. Without limiting the generality of the foregoing, a purpose is to provide such a plan for a person who, as a result of his or her serious mental disorder, experiences this pattern: the person is admitted to a psychiatric facility where his or her condition is usually stabilized; after being released from the facility, the person often stops the treatment or care and supervision; the person's condition changes and, as a result, the person must be readmitted to a psychiatric facility."

**Mr Chair,** this is simply in keeping with trying to resolve the issue of the preamble, and having it in 33.1 is actually the intention.

**The Chair:** Any further comments?

**Mrs McLeod:** I appreciate the fact that it's an expansion of what we had before. It doesn't replace the bill of rights, in my view, but the hour is late and I won't proceed on the arguments around why I believe we need to have a bill of rights, or at least the principles that Mr Patten put forward earlier.

**Ms Lankin:** I think we will have an opportunity to deal with the bill of rights amendments that have been stood down, some of which stand separate from this. Let

me say, with respect to the purpose clause, although I still believe we need to insert that it is a less restrictive treatment than detention into the criteria, and we'll have an opportunity to do that, the attempt to describe the pattern of treatment and experience of the individual is a very important step in attempting to narrow the clinical definition of the population that would be intended for CTOs to apply to, and it's a huge improvement over what was there. I thank the ministry and leg counsel and all who worked on it for taking our concerns seriously.

**The Chair:** Further comments? Seeing none, I'll put the question. Shall the amendment carry? Carried.

The next deferred amendment—we might as well stay on this section—was number 35, the NDP motion. Ms Lankin, did you have any further comments?

**Ms Lankin:** I withdraw that.

**The Chair:** Number 35 is withdrawn.

That would take us to number 36.

**Ms Lankin:** This is another version of the purpose clause, so I withdraw.

**The Chair:** Number 36 is withdrawn.

Number 37.

**Ms Lankin:** Have I read this into the record yet?

**The Chair:** Yes, it has been read.

**Ms Lankin:** This is an addition to 33.1 in the criteria section which adds a criterion that refers back to the purpose clause that was just passed. The purpose clause makes reference to providing treatment in a less restrictive manner than being detained.

This amendment reads: "For the purpose of determining what constitutes less restrictive treatment under subsection (1)"—which still applies—"with respect to a person for whom a physician is considering issuing or renewing a community treatment order under subsection (2), a physician shall have regard to the person's opinion as to what constitutes less restrictive treatment for him or her."

The reason for this is that we have a cultural bias, all of us in this room, assuming that a community treatment order in all circumstances would be less restrictive than being detained in a psychiatric hospital. That may not be the case for certain individuals. All we're saying here is that, for those individuals who are not capable of giving consent to the treatment plan themselves, because they have control of that, where a substitute decision-maker is involved, the physician will have regard to that opinion. It's not an overriding clause. It doesn't prohibit the physician from proceeding, but it indicates that, irrespective of the status of capacity of the individual, their experience and their real-life beliefs about what constitutes best treatment for them and least restrictive treatment for them must at least be heard and considered.

**The Chair:** Any further comments?

**Mr Clark:** We would be of the position that basically we're talking about informed consent, and it's under the Health Care Consent Act. The person who is agreeing to a community treatment order would be involved with the informed consent, and if it's the substitute decision-maker then they would be involved in that discussion.



**Ms Lankin:** If I may, I recognize you're absolutely right. The point I just made is that for that person who has been determined as incapable of giving informed consent and for whom the decision will therefore be made by a substitute decision-maker, this provision would compel that there still be a consideration of that person's opinion with respect to what is least restrictive for them. It is not overriding. They don't get to make the decision, but their opinion must be heard. Given the experience of individuals and the varied experiences of how they react to different situations, medications etc, they may feel that a medication-free detention in a psychiatric facility as opposed to a community treatment order with forced medication as part of it is less restrictive. They should at least have the opportunity to make that case and for that to be considered.

2030

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

The next deferred amendment was number 39.

**Mr Patten:** This was the discussion on the involuntary basis. The only thing I would ask is whether the government has had any second thoughts about this.

**Mr Clark:** I'd like to refer to counsel. We've had some more consideration of this.

**Mr Sharpe:** I spoke to Dr Steve Connell, who I believe was a witness before the committee at one point. I think he's head of the Ontario Psychiatric Association. He had several concerns that I am passing on to the committee.

He gave the example of a current patient of his who is manic depressive. He said that when in the depressive stage of the psychosis, this patient had been admitted repeatedly as a voluntary patient. The patient is now in the manic phase of the illness and is acting out in a way that Dr Connell feels is destroying his life and wasting his assets, and is suffering significant mental deterioration. He feels this person would be a good candidate for a community treatment order, but if the past hospitalization had to be involuntary, this person would not qualify. So that was one case he gave.

He also said that many schizophrenics have a series of voluntary admissions, and that would disentitle them to be candidates for community treatment orders. He referred to the Manitoba experience. He had spoken to, I suppose, other psychiatrists in Manitoba and he found that, because they do have the provision of involuntary admission as a prerequisite for community treatment orders, these physicians have to involuntarily commit patients in order to have them qualify for CTOs. As a consequence, the rate of involuntary committal has increased, and this is viewed as a more restrictive approach.

Finally, when I suggested to him that many patients may not come to hospital voluntarily for fear of being placed under these community treatment orders, his view again was that he didn't agree with that. I am simply passing on his concerns to the committee about accepting

an amendment that would limit the prior hospitalization to involuntary admissions.

**Ms Lankin:** I appreciate your making the effort to contact Dr Connell. I have the highest regard for him and work with him in my community on a number of issues. However, I believe he was very much involved in the drafting of this language in the first place, and I believe there are other issues that have been brought forward by others. Had you called them, you would have heard something very different. I understand we're limited by time. I point out that in the first example Dr Connell raised, with respect to the person suffering from a manic depressive disorder, there is the capacity, if the person is in the state that he is describing now, to involuntarily admit that person and release them under the leave provisions. He hasn't addressed that. That's not something he has been here to hear, this new provision being put in place.

Secondly, yet again I make this point: To suggest that someone would be in a situation for a CTO and that that be determined to be less restrictive than being detained, there has to be at some point in time in the person's history an experience in which they've met criteria for being detained. Not only do the CTO criteria not explicitly say that in terms of the existing state of the person—they only have to meet the referral form 1 criteria—it's not even saying that with respect to the past experience.

I think we have made the point over and over to the ministry that there is another mechanism through involuntary committal and use of the leave provision to address these individuals you're worried about. I believe there is a difference in philosophical opinion from those who are arguing for the broadest and most lenient and most flexible implementation of CTOs, those who are deathly opposed to it in the community and those of us who are in the middle trying to build the best balanced legislation.

The arguments I have heard put forward, while I understand their genesis and I have the highest regard and respect for them, I respectfully disagree that we, as a committee who have heard on balance significant evidence to suggest otherwise than that, should be bound by that opinion. But I truly do appreciate counsel's seeking that out for us tonight. I don't think it undermines the point that's been made by Mr Patten, Mrs McLeod and myself earlier.

**The Chair:** Thank you. Any further comments? Seeing none, I'll put the question. All those in favour of the amendment?

**Ms Lankin:** Could we have a recorded vote, please?

**Ayes**

Lankin, Patten.

**Nays**

Clark, Dunlop, Munro, Wood.



**The Chair:** The amendment fails.

That takes us to number 40.

**Ms Lankin:** I will read it into the record. It stands for itself. It deals with the same question matter that was just defeated.

I move that—

**The Chair:** I think it's already on the record, is it not? We haven't deferred any amendments without reading them into the record first. Can the clerk confirm that? Number 40 was read into the record?

**Clerk of the Committee:** I believe it was. I have your document.

**Ms Lankin:** It is another amendment with slightly different wording that would create the criteria of admissions in hospitals having been involuntary admissions. There is some other stuff in there, and at this point in time I'll just let it stand for a vote. A recorded vote, please.

#### Ayes

Lankin, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

**The Chair:** The amendment is lost.

If my records are correct, that allows me to then ask the question. Shall section 14, as amended, carry? Section 14, as amended, is carried.

That takes us back to amendment 9, which was deferred. A Liberal motion. Mr Patten.

**Mr Patten:** I will withdraw that because that has been dealt with under number 33.

**The Chair:** Thank you very much, Mr Patten. Amendment 9 has been withdrawn.

Amendment 10, another Liberal motion.

**Mr Patten:** I think we'll want a vote on this one. Lyn feels very strongly about it, and so do I. I've heard what the government has said, that they will proceed with that argument; when you do then you can withdraw this at that particular time. Anyway, we are ready to vote on it and I move it.

**Ms Lankin:** Has it been read into the record?

**The Chair:** It has been. All the amendments have been read into the record.

Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

That takes us to the last of the deferred amendments, which is number 12.

**Ms Lankin:** This is the amendment which establishes rights of persons receiving mental health services, indicating that the people must be dealt with by service providers in a courteous and respectful manner, free from mental, physical and financial abuse; in a manner that respects dignity and privacy and promotes personal autonomy; in a manner that recognizes personal individ-

uality and is sensitive to and responds to the person's needs, preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors; the right to be provided information about community services and be told who will be providing the service; and the right to timely treatment.

This is a rights section. It stands alone and separate from section 33.1, which deals with the clinical marrying of the community treatment orders and the patient population they would apply to. This is in respect of all persons receiving mental health services. In light of the section of the act which broadens the involuntary committal criteria and some of the other amendments that are outside of the community treatment order, we felt it was important that rights provisions be put in that deal with these services, whether they are in the community or facility-based, which is the reason for the language referring to persons receiving mental health services.

As I said, it's a stand-alone rights section separate from the purpose clause of 33.1, and I would hope there would be support for it.

**The Chair:** Further comments? Seeing none, I'll put the question.

**Ms Lankin:** Recorded vote, please.

#### Ayes

Lankin, McLeod, Patten.

#### Nays

Clark, Dunlop, Munro, Wood.

**The Chair:** The amendment is lost.

Shall section 2 carry? Section 2 is carried.

**Clerk of the Committee:** Section 2 has been done.

**The Chair:** I beg your pardon. We've just carried it a second time. OK, just confirming our good works earlier.

I'll be posing a question. From the debate I heard earlier, I don't know whether in fact it is the wish to continue to have a preamble in the bill, but because it's in the bill that's been sent to us, shall the preamble carry? No, the preamble does not carry.

Shall the long title of the bill carry? The long title of the bill is carried.

Shall Bill 15, as amended, be carried? Bill 15, as amended, is carried.

Shall I report the bill, as amended, to the House? Thank you. I will be reporting the bill.

With that, allow me to put on the record my thanks to all parties involved. It's been a very productive session, a very long one as well, and I think adding reinforcement to the merits of the first reading hearings. Maybe the art of the possible has been reinforced here, up to a point.

**Ms Lankin:** I would echo your comments of thanks to a number of individuals. In particular, I want to say that the ministry staff, in addition to leg counsel, who have been working under tight time frames, has had as well, both in the drafting of the bill and in dealing with

subsequent amendments and in a series of meetings with opposition critics, very tight turnaround times. We're very appreciative of the work that's been done.

I couldn't let this opportunity go by without saying officially, on the record of Hansard, that as Gilbert leaves official employ of the Ministry of Health after many, many long years of dedicated public service under governments of all political stripes and ministers of health of all temperaments, and has sat before many legislative committees and provided good, honest counsel to ministers, parliamentary assistants and to committees who have asked for that, it's incumbent upon me to say thanks on behalf of all legislators who have worked with you and the public that you have served. I wish you well in your future career and hope that the Ministry of Health has deep pockets and can bring you back from time to time.

**The Chair:** Just to show how late in the day it was—I could blame the clerk, but I have to admit I didn't notice

it either—he's obviously recycling paper, because obviously we dealt with Bill 68, not Bill 15. So allow me to ask the proper question.

Shall Bill 68, as amended, carry? Bill 68, as amended, is carried.

Shall I report Bill 68 to the House? Agreed. Thank you.

Mr Ouellette, who has Bill 15, will be very disappointed to know he still has to go through hearings next week. Again, thank you all.

**Mr Clark:** Just as a quick comment, I do sincerely want to thank the opposition parties. I think the bill has been vastly improved through the process, and I thank you for your participation.

**The Chair:** Thank you to the ministry staff and all who participated.

The committee stands recessed until 3:30 pm next Monday for the purpose of hearing Bill 15.

*The committee adjourned at 2044.*





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## **Legislative Assembly of Ontario**

First Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 19 June 2000

Lundi 19 juin 2000

*The committee met at 1542 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the committee to order for the purpose of dealing with Bill 15, An Act to regulate the discharge of ballast water in the Great Lakes.

First off, I wonder if Mr Levac would read into the record the report of the subcommittee.

**Mr Dave Levac (Brant):** I would be glad to do so. This report is from your subcommittee.

"Your subcommittee met on Wednesday, June 7, 2000, to consider the method of proceeding on Bill 15, An Act to regulate the discharge of ballast water in the Great Lakes, and has agreed to recommend:

"1. That the committee meet in Toronto to consider Bill 15 at its regularly scheduled meeting time on Monday, June 19, 2000.

"2. That notice of the hearing be placed on the Ontario parliamentary channel and on the committee's Internet Web page.

"3. That the deadline for the receipt of requests for those wishing to make an oral presentation be 3 pm on Friday, June 16, 2000.

"4. That the deadline for the receipt of written submissions be 3 pm on Friday, June 16, 2000.

"5. That time allocated to those making oral presentations be set at 20 minutes.

"6. That the Chair and the clerk of the committee be authorized to schedule witnesses and to make whatever logistical arrangements are necessary to facilitate the committee's proceedings."

So moved, Mr Chairman.

**The Chair:** Mr Levac has moved adoption of the subcommittee report. Is it the favour of the committee that the subcommittee report carry? Carried.

GREAT LAKES ENVIRONMENTAL  
PROTECTION ACT, 1999LOI DE 1999 SUR  
LA PROTECTION ENVIRONNEMENTALE  
DES GRANDS LACS

Consideration of Bill 15, An Act to regulate the discharge of ballast water in the Great Lakes / Projet de

loi 15, Loi réglementant le déchargement de l'eau de lest dans les Grands Lacs.

**The Chair:** Our next order of business will be the actual introduction of the bill. Mr Ouellette.

**Mr Jerry J. Ouellette (Oshawa):** First off I'd like to read just a small excerpt from the presentation I made to the US Senate committee on a similar bill that's being passed in the States, where I was asked to present, because of the similar piece of legislation here.

"I would like to thank the committee for the opportunity to speak today.

"I must commend Senator Sikkema for the introduction of his bill 'Natural Resources and Environmental Protection Act.' The quote 'The promises of US federal laws passed in 1990 and 1996 to control the spread and introduction of non-native species have been unfulfilled. It is time that we in Michigan take control of our destiny as the Great Lakes state and put a stop to this damage.'" It is one of the reasons that we're discussing this bill of similar actions here in Ontario.

As I explained, "We have passed two readings of a similar piece of legislation in the province of Ontario, the Great Lakes Environmental Protection Act. My bill calls for deep water exchange of ballast tanks. With 75% of 140 exotic species having been introduced by ballast water, the deep water exchange shows an effectiveness of 86% in stopping further introductions ... I believe both bills"—Senator Sikkema's as well as my own—"attempt to resolve the problem with the removal of the possibility of further problems relating to the accidental introduction of any new and unwanted organisms.

"The initial cost of these invading species for Ontario Hydro is estimated at \$20 million putting zebra mussel controls in place and an annual cost of \$1 million ongoing operating costs.

"I believe that the shipping industry itself should applaud having the ability to say there is zero opportunity for introduction of any new species as cleanup costs could be directed to the industry responsible for the accidental introductions.

"The Hushak study indicated a total cost of US\$102.4 million. We certainly see the financial impact currently in industries let alone the possible legal implications on the industry responsible. The introduction of the comb jellyfish into the Black Sea saw a reduction of the fish harvest of 90%. An accidental introduction such as this in the Great Lakes would have a similar detrimental impact, as

locally in my region of the province, a small 50-mile stretch of shoreline on Lake Ontario, fishing represents an annual expenditure of \$75 million.

"Locally after the introduction of my bill we have seen a flurry of activity from the federal government"—becoming heavily involved with the legislation, as well as the shipping industry, which is here today, I'm happy to say—"asking for a coordinated effort with all affected jurisdictions found on the Great Lakes. I believe that first and foremost, our federal governments are not taking care of the interests of our constituents, and we have to. I believe that the recommended timeframe of my federal counterpart is too undefined to ensure the completion of the necessary legislation.

"I believe that we as a jurisdiction directly connecting to the Great Lakes should establish the common ground necessary to draft legislation that will allow industry compliance while fulfilling the expectations of all pertaining jurisdictions. I am here secondly today in hope that Senator Sikkema's quote, 'It is up to Michigan and our neighbouring states to pass the regulations needed to protect our Great Lakes waters,' is an invitation"—for all jurisdictions—"to work together for a common legislation.

"I'm committed to work with Senator Sikkema in modifying our legislation so that we are able to jointly agree on common areas. The Senator's sediment section can be adopted along with the sterilization treatment definition. Knowing industry as we do, we must ensure that treatment methods do not contain toxins which may be discharged into our Great Lakes waters.

"I have contacted each jurisdiction abutting the Great Lakes and received an about-time response," from all abutting jurisdictions.

"The Canadian government who now appears to be lobbied into doing something has asked for my assistance in the drafting of federal Canadian legislation where compliance will be necessary in all inland waterways.

"I will assure you here today that only a coordinated effort will work to bring forward all our governments' legislation that complies with the needs of all jurisdictions."

Essentially, this legislation is designed whereby deep-water discharges from Great Lakes ships coming in—it reduces the opportunity for invading species as there are a very minimal number of aquatic species in seawater. As well, the high saline content does not allow for freshwater species to live in ballast water, and this is an attempt to reduce the possible introduction or further introduction of new species. I think some of the members here know of some of them: the zebra mussel, which has been mentioned in the speech I made to the US Senate, as well as the spiny waterflea, the round goby, to list but a few of the number of unwanted introductions that Ontario has seen.

The overall cost is undefined as no jurisdiction or agency has taken it upon themselves to find out what the actual cost of all these invading species is. Hopefully,

this is an attempt to reduce the possibility of new species coming into the province.

#### TRANSPORT CANADA, MARINE SAFETY DIVISION

**The Chair:** We have two groups that have expressed an interest in speaking to the bill. The clerk informs me that they are both in attendance here today. Our first group is Transport Canada, Marine Safety Division. I wonder if their representative or representatives could join us at the witness table, please.

**Mr Gilles Bisson (Timmins-James Bay):** Chair, do you think we could find enough money to fix that poor man's nameplate?

**The Chair:** I'm sure the clerk will take that under advisement.

Good afternoon and welcome to the committee. We have 20 minutes for your presentation. If you choose, you can leave time for a question-and-answer period or use the whole 20 minutes for your presentation.

**Mr Bud Streeter:** I think the challenge of my presence here has been laid out quite clearly by Mr Ouellette. I would like to simply elucidate on some of the things that we have been doing. I do have a written brief that I could leave with you as well. I intend to use about seven minutes and then perhaps respond to questions and provide some clarification.

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My name is Bud Streeter. I am, as introduced, the director general of Marine Safety in Transport Canada. Marine Safety's mandate encompasses the full spectrum of responsibilities related to ship safety and environmental protection—excluding pleasure craft—including administration in national-international laws designed to ensure safe operation, navigation, design and maintenance of ships, protection of life and property and the prevention of ship-source pollution. The prevention of further introductions of exotic species through shipping is therefore something that does fall within our mandate.

This is not the first time we've been in front of the Legislative Assembly of Ontario on the ballast water issue. We were here in 1991 in front of the standing committee on resources development during discussions concerning zebra mussels and purple loosestrife in those days. As not everyone may be familiar with things that have happened since then, and some before then, I'd like to briefly explain some of the background.

Transport Canada first introduced voluntary guidelines for mid-ocean ballast water exchange in 1989 for ships destined for the Great Lakes. It was done at that time in response to concerns expressed by the Great Lakes Fishery Commission due to the recent introduction of several nuisance species, which we've already talked about. As clearly pointed out by Mr Ouellette, many of them are attributed to the discharges of ships' ballast water.

We consulted with the United States Coast Guard, our Department of Fisheries and Oceans, the marine industry,



the province of Ontario, the province of Quebec and many others. We revised the guidelines in 1990-91 and again in 1993 for the shipping seasons and they now apply to all ships destined for the St Lawrence River or the Great Lakes that pass a line which runs through Anticosti Island in the Gulf of St Lawrence.

From the onset, there has been, and we admit, a strong sentiment to legislate to reduce or eliminate the risk. Unfortunately, until October 31, 1998, the Canada Shipping Act did not permit the federal government to undertake mandatory legislation in that area. However, given that legislative authority relating to matters dealing with shipping was assigned to the federal government under section 91 of the Constitution, the main piece of legislation was the Canada Shipping Act, which, until we started the modification process, was almost as old as the Constitution, unfortunately. We presently have in Parliament first reading of the Canada Shipping Act, 2000, which expands the regulation-making authority, from ballast water management to prevention and reduction of release of all types of aquatic organisms and pathogens.

We also had, and continue to have, serious concerns about the safety of vessels that exchange ballast water at sea. Many research projects have been undertaken, not just by Transport Canada but by the International Association of Classification Societies and other jurisdictions, including the United States Coast Guard, that indicate that there are some concerns in respect of fatigue and stress of ships that may undertake ballast water exchange on the high seas. As a result of that, we introduced a closer ballast water exchange area in the Gulf of St Lawrence where we believe the water is still cold enough to deal with most of the organisms that may be found.

The United States Coast Guard introduced mandatory exchange requirements for the Great Lakes in 1993. What they do is carry out water salinity tests on ballast water for all vessels that are voyaging through US waters. As a result of having to pass through US waters to get to Ontario ports, these tests are carried out when we do joint boardings in the pool in Montreal. As Mr Ouellette explained, they test the salinity, the feeling being that if the salinity is high enough the organisms have been in fact taken care of.

Although we did receive authority to implement legislation in 1998, we did not at this point, pending the results of research and also our desire to push the international community to do something, because we felt that the United States' testing was, for Canada, and specifically for ports in the Great Lakes, an effective control mechanism as well.

We are pushing the International Maritime Organization to develop mandatory guidelines for ballast water control. One of the difficulties always with international organizations is that you move as fast as the lowest common denominator. As a result of that, it has been fairly protracted. However, when the regulations, the guidelines, were written at the IMO, we implemented them immediately in Canada, and several other countries did. We have developed draft guidelines for all parts of

Canada and we will be implementing those in Canada on September 1. They are of course guidelines. There is no legislative authority for us to mandate punishment if people do not follow; that comes as a second stage.

The Michigan bill, Bill 955, has been alluded to by Mr Ouellette. It was introduced in the state of Michigan. In its initial form, it proposed that ballast could only be discharged in Michigan waters if a permit was issued and if the ballast water was sterilized. It has generated both support and criticism.

The governor of Michigan and the Michigan Department of Environmental Quality are now working on a regional approach through the Council of Great Lakes Governors. They have in effect given industry and regulators on both sides of the border—Transport Canada and the US Coast Guard—12 months to review and work on various initiatives, including the use of biocides testing, the use of ultraviolet sterilization and effective programs of exchange.

The working group has been organized by the Michigan Department of Environmental Quality, which consists of marine industry representatives from both sides of the border, the United States Coast Guard, Transport Canada and the Department of Fisheries and Oceans here in Canada which is responsible for environmental issues. They are expected to report to the council within 12 months.

From our viewpoint, an operational viewpoint, we are concerned that several aspects of the bill you are dealing with today may give rise to legal challenge. There are a number of cases in Canada—the Queen v. Kupchanko, for example, in BC; La Rochelle v. Austin, a municipality in the province of Quebec—that suggest that constitutional challenges can be mounted in issues like this where we are perhaps not observing the federal-provincial division of powers. We've found that these cases are expensive and time-consuming, I respectfully suggest, for both levels of government.

We certainly believe in finding the correct balance to produce a regime that is practical, effective, environmentally responsible and enforceable, and in our case, of course, we're also worried about safety. It has unfortunately been ongoing for many years and there still remains a lot of work to be done. Having said that, we're moving ahead. We see the implementation of proposed national ballast water management guidelines as a necessary first step. We'll be monitoring the compliance of that and if we have to take unilateral legislative or regulatory action, we will do that. It is not something that Canada is noted for, of course, in terms of international conventions, but we will do that if we have to. We have been focusing our efforts on that front and we have been working since 1991 with many and all partners to try to address this issue.

I appreciate the opportunity to appear today and I would, as I said, answer any and all questions that I am able to. Although I was unable to meet with Mr Ouellette, members of my management team did and we did thank him for his participation and encourage him to



continue. He's been invited to attend several of our fora to help us address this. We certainly would encourage your active support in the federal initiative. At that, I'll leave it, say thank you and answer any questions you may have.

**The Chair:** Thank you, Mr Streeter. That leaves us about three minutes per caucus. We'll start the rotation as always with the Liberal Party.

**Mr Levac:** I do have a couple of quick questions. You indicated that you've identified the lowest common denominator of speed at which we're working with this and you can only go as fast as the slowest are operating. Can you identify some of the slow partners in this particular discussion?

**Mr Streeter:** I think the slowest partners in any discussion at the IMO are those countries that are known as open registries, that may not live up to all of their flag state obligations. Having said that, the IMO have recognized that and have created a new subcommittee to deal with those issues to try to make sure we pull them along.

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**Mr Levac:** OK. Second to that, a couple of the written reports that I've received have indicated a general idea that what's being proposed is not a bad idea except, and then they go into reasons why they can't support the bill in its entirety at this moment, some because they believe it's a federal jurisdiction and some believe that they're Ontario ports we're talking about and it's not going to affect the rest of the partners. Just a general comment from your perspective. If indeed we are able to pass this legislation, is there anything preventing the continuation which Mr Ouellette referred to of the very important discussions that have to take place with all of the partners?

**Mr Streeter:** If you choose to pass this legislation, no. We would not stop an initiative because we believe that someone may have passed legislation that they should not have. That would not be productive at all.

**Mr Levac:** How would you respond to the critics who might say we're going to pass the legislation even though you're not doing anything?

**Mr Streeter:** I would respond, as I have responded, by saying we are doing many things. The difficulty always in our case is, of course, achieving consensus with various partners, and at the same time maintaining the safety and the protection of the environment.

**Mr Levac:** Finally—do I have time, Mr Chairman?

**The Chair:** Sure.

**Mr Levac:** Have you done or are you aware of any organization that has done a proactive study of the species or plants or anything that can invade our shores ahead of time? Because it seems to me, historically, what we're doing is finding after the fact these things that are getting dumped on to us. Has anyone done an inventory of those dangerous species out there, that if they get mixed with us, we're going to be in trouble?

**Mr Streeter:** Not a full one that I'm aware of, sir, no.

**M. Bisson :** Bonjour. Comment ça va ?

**M. Streeter :** Très bien, merci.

**M. Bisson :** Je pensais que vous parliez français.

**M. Streeter :** Je peux parler seulement le français.

**M. Bisson :** Je voudrais savoir, y a-t-il d'autres juridictions qui ont fait quelque chose du côté législatif sur ce point-là ?

**M. Streeter :** Pour nous c'est deux choses : c'est la juridiction et aussi peut-être, si la loi passe, qu'elle va nous donner des problèmes avec quelques partis qui ne veulent pas suivre les recommandations au moment.

**M. Bisson :** Ça m'amène à ma deuxième question : si la province de l'Ontario ou la province de Québec ou une des provinces maritimes décidait de faire quelque chose elle-même, est-ce qu'on entre un peu dans le problème que les lois vont être différentes dans différentes juridictions ? Comment peut faire la police ?

**M. Streeter :** La chose que nous avons dit dans notre mémoire est d'essayer de travailler ensemble pour une solution régionale avec les États sur les Grands Lacs avec l'Ontario, et avec le Québec et aussi avec, comme vous avez dit, les provinces atlantiques parce que c'est vraiment l'entrée du Canada.

**M. Bisson :** C'est ça un petit peu mon problème. Je n'ai pas de problème avec le principe de la loi ; je pense que ça a du bon sens. Mais comme représentant provincial qui a besoin d'avoir une approche nationale dans le sens que le gouvernement du Canada fait des ententes avec les États-Unis en même temps parce qu'on a tous les deux les mêmes sources d'eau, et deuxièmement, avec les autres provinces, avoir plutôt une loi fédérale pour être capable de traiter toutes ces questions-là autrement qu'une loi provinciale, je me demande si c'est mieux.

**M. Streeter :** Oui, mais il est possible d'avoir un cadre national avec quelques variantes régionales là-dedans. C'est ça qui en réalité sera la solution pour nous ici. L'environnement sur les Grands Lacs est différent de celui sur les trois côtes du Canada.

**Mr Bisson:** Just one last really quick question, in regard to what you were talking about the fatigue given to a ship when you empty bilge water at sea—

**Mr Streeter:** Ballast water.

**Mr Bisson:** Ballast water. How much water are we talking about? A big ship like one of the big lakers: Is there a lot?

**Mr Streeter:** Yes. We're talking potentially, if the vessel is travelling in ballast, thousands of tonnes. A vessel may potentially carry upwards of 10,000 tonnes of ballast water. The difficulty is it's carried in various compartments, and if the vessel is already under stress because of the waves and heavy weather and then you start loading and unloading ship, you can put it in positions where—

**Mr Bisson:** I think there are cases where that happens.

**Mr Streeter:** There are cases where it's been speculated that that was the cause of a fatality, but I would say there's no concrete, solid proof. There are cases where we believe ships have been stressed and, of course, we have insufficient data of the effect of this over the life of a ship.



**Mr Bisson:** Interesting. Thank you.

**Mrs Julia Munro (York North):** Actually, I wanted to follow on that last comment, because it seemed to me as I was listening to your presentation that the question of the ballast is a significant one, particularly when you outline the kind of quantity that this represents. Does that mean that what you see as an alternative would be some methods of sterilization, some methods of the treatment of the water, as opposed to the exchange?

**Mr Streeter:** We see those other alternatives as alternatives to exchange. We need to do work in two significant areas right now. One is to confirm, as Mr Ouellette clearly pointed out, the effectiveness of ballast water exchange. The second is an issue that we call NOBOBs, meaning “no ballast on board,” where ships come in and declare that they have no ballast because they’ve pumped it all out. It happens sometimes on the lakes because, of course, they want a light draft because of the seaway. Then, of course, there’s sediment in the tank that we’re also concerned about and we want to do some testing of the sediment this year in a program with the US Coast Guard.

So we see them as alternatives. Very clearly we need to test, especially if you talk—and some people are talking—biocides. There’s no point in a cure that’s worse than the disease.

**Mr Bisson:** Biocides? What are biocides?

**Mr Streeter:** Hypochlorination, for example, kills them dead.

**Mrs Munro:** Just to follow that up, because to me that is really the heart of this issue, are there other jurisdictions that are ahead of us on this problem in terms of being able to look elsewhere? I’m assuming that if we have been invaded by this process, other coastal areas must have experienced a similar kind of impact on their native water species. Do we have the experience of other jurisdictions?

**Mr Streeter:** Unfortunately, all we have is—again as pointed out by Mr Ouellette, whose research, I might say, is very complete—the Black Sea and the Caspian Sea, which are, unfortunately, bad examples. There is no prevention there. But what we have been doing, and as part of the working group that I mentioned that Michigan has started and that many of us are working with, is we have also talked with people in Australia who have been working on ultraviolet sterilization, so we’ve been trying to drag in the state of art around the world. The difficulty is making sure the equipment itself is safe to use on board ships and then, secondly, to make sure the ships design their pumping systems so that it can be used on board ships.

**Mrs Munro:** Thank you very much.

**Mr Ouellette:** Thank you for your presentation today. Pass on my regards to Mr Day when you’re back.

**Mr Streeter:** Yes, sir, I will.

**Mr Ouellette:** We talked about sediment, because what happens as the ballast water comes in is that then the weightier material settles to the bottom and you get a heavy amount of contaminants, invading species and that.

Are the feds doing much research in the sediment area at all? You mentioned you were going to get involved with Michigan on that?

**Mr Streeter:** No. What we’re going to do is get involved in a program with the United States Coast Guard to sample and have this tested. I’m meeting with Admiral Hull in the US ninth district in the next few weeks to try to set that up.

**Mr Ouellette:** How effective are the biocides and the ultraviolet light on sediment? There would be a lot of eggs in sediment as well. Although the mature organism may be in the water, the eggs could be in the sediment as well. How effective are those in the—

**Mr Streeter:** I really can’t answer those questions at this time. That’s why the research—it may well be a combination of exchange. One of the other areas where we’re doing research at present is we have moved a ballast water exchange area east of the entrance to the Great Lakes, as you know, and now we’re working with the Bedford Institute of Oceanography to try to find one off the east coast of Canada where the water is deeper and colder still, because we’re not sure what the impact may well be down the road on the area that we’ve chosen, if it changes over time.

**Mr Ouellette:** Are there any filtration prevention systems that work as the ballast is coming on-board, or just as it’s coming off-board?

**Mr Streeter:** The cyclonic separator that people are studying is, in effect, a centrifugal separator that could be applied to both. There is nothing that would prevent you from applying it on the influx, except that normally you have to pump it to do that, and you’re only usually pumping outside and you’re flooding in, if you know what I mean. You could apply microfiltration on the inside, but again, the installation details, the impact on the safety of the vessel, the impact even on the design of the vessel are all questions that haven’t been answered, unfortunately.

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**Mr Ouellette:** On the ultraviolet—I’m not sure how much time we have—when we were at the US Senate committee, one of the presenters was a shipping company that explained that the ballast can be constantly coming in and going out.

**Mr Streeter:** Yes.

**Mr Ouellette:** Does the ultraviolet, in order to function properly, have to remain for a period of time, or is it something that can pass through in the same fashion that they were saying?

**Mr Streeter:** The ultraviolet sterilization that you use now, depending on the strength of it, you adjust the flow rate to give a sort of resident time in the area that you’re sterilizing. Of course, the faster the flow rate, the higher the power has to be on the ultraviolet, and then of course you start getting into the occupational safety and health concerns of it. So it’s trying to find that balance between efficiency, safety and effectiveness that we’re all wrestling with.



**Mr Ouellette:** Thank you and thanks to Transport Canada for working together on this.

**The Chair:** Thank you, Mr Streeter, for coming and bringing your presentation to us today.

#### CHAMBER OF MARITIME COMMERCE

**The Chair:** Our next presentation will be from the Chamber of Maritime Commerce. Good afternoon, gentlemen. Again, we have 20 minutes for your presentation, to be divided as you see fit.

**Mr Jim Campbell:** My name is Jim Campbell. I'm vice-president and general manager of the Chamber of Maritime Commerce. With me is one of our members, Georges Robichon, who is vice-president and general counsel for Fednav Ltd.

The Chamber of Maritime Commerce is a trade association that represents most of the Great Lakes-St Lawrence waterway's Canadian and US shippers, domestic and ocean-going carriers and ports. With more than 120 members, the chamber has been in existence since 1959. Mr Chair, what we'll do is, I'll make a short statement and Mr Robichon will make a short statement. We find that questions and answers are much more constructive.

In Ontario, the chamber represents steel, agriculture, salt, cement and aggregate shippers that rely on marine transportation to bring new materials into their operations or distribute their products to both domestic and international markets. Our organization, like the waterway, is therefore quite unique. It is no wonder then that the CMC would be interested in this or any other legislation that could affect the efficient and reliable movement of the millions of tonnes of commerce that transit the waterway every year.

The issue of the introduction and transfer of nuisance, non-indigenous species is a very serious environmental matter. In Canada and abroad, the marine industry is working with the International Maritime Organization, the IMO, to develop stricter standards for ballast water exchange in order to stop the transfer of organisms from port to port. I won't go into the details. I think Mr Streeter did an excellent job of that.

But we do wish to express that, in the Great Lakes, every ocean-going ship, as Mr Streeter mentioned, has its ballast water tested for salinity levels in Montreal before it is allowed to come into the Great Lakes. If it does not meet standards, it is then either sent back to the St Lawrence to reballast or they actually dump salt, sodium chloride, into the tanks to make sure the saline level is up to a particular level. Last year alone a couple of ships were sent back from Montreal after two days, back down river, a day of getting their ballast exchanged, and then two days back up. It's a very expensive process for the ship owners, so they're quite diligent in making sure that their ballast is exchanged before they get to Montreal.

Over the last three years in the Great Lakes, the marine community has undertaken studies surrounding a technological and ballast management solution by testing

a filtration system on a bulk trader in the waterway. This is the Algo North, Algoma Central Marine's ship. A filter was put on and it was tested over a season. It was then taken off and is being tested in the port of Duluth at this time.

There have been some difficulties with it. They top down at about 1,500 gallons per minute that they could actually process through the filter, the problem being that the laker it's on averages about 8,000 to 10,000 gallons per minute. So it is a bench model. One of the other problems is it only worked up to about 75% to 80% effectiveness and that's just not good enough. So there is a lot of work to do, as Mr Streeter had mentioned.

What will happen at the end of the day, though, is there's probably going to be a series of measures with regard to ballast water. It'll be a management issue. It will be things as simple as when a ship is taking on water for ballast, it will do it further out from shore so it doesn't bring up sediment. It will be able to not have to make the tough decisions, as it seems the Transportation Safety Board has suggested the captain of the Flare, which went down two years ago, had to go through, the one in which 21 men were lost. You were asking if changing ballast water is a problem. In fact, the Flare had an empty ballast tank and the Transportation Safety Board is suggesting that that empty ballast tank contributed to it breaking up and all those men dying. So it is definitely a safety concern.

But from Australia to the Baltic to Lake Ontario, this is an international problem, we believe, that requires an international solution. Currently, legislation in Michigan, Minnesota, New York, Pennsylvania and here in Ontario has been introduced to deal with ballast water exchange. As well, bills have been introduced in both Ottawa and Washington to deal with the issue on a national basis, each different, some with very specific measures that outline regulatory parameters, permitting and monitoring regimes, funding mechanisms and fee structures or, like this bill, in large part reinstate already ongoing practices.

Our difficulty with this issue of a jurisdiction-by-jurisdiction approach to a very real problem would be akin to the trucking industry being expected to change their tires every time they go from a province to a province and a state to a province and a state to a state. With a myriad of different regulatory frameworks, it would be extremely difficult to trade into the lakes, regardless of the good intent, which is one of the reasons why we are here today to suggest that this approach to addressing non-indigenous species is understandably one involved with frustration. In Michigan and in Minnesota there is frustration with Washington not doing their job; here in Ontario, Mr Ouellette has indicated quite clearly that he is frustrated with Ottawa not doing its job. I think Mr Streeter addressed that.

What we feel is required is a partnership between industry, Ontario, the eight regional states and the two national governments to develop a long-term constructive solution for our region. We must harmonize standards and regulations so that regardless of the port, state or



province, ships will be treated equally. We have been working with the government in Ottawa to move forward quickly in undertaking what is needed to assure that the lakes and all water systems in Canada are protected.

Mr Ouellette, as Mr Streeter suggested, should be congratulated for raising the profile of this issue. But he is also correct in his comments today that the regional jurisdictions, with national governments, must find common ground. We would recommend that this bill not go forward and that Ontario direct its efforts to working with the federal government and the Council of Great Lakes Governors to find a regional and binational solution to this issue.

I'll pass on to Mr Robichon and answer your questions later.

**Mr Georges Robichon:** Let me just briefly describe Fednav. Fednav is an international shipping company. We're based in Montreal. We account for roughly half of the tolls paid to the St Lawrence Seaway for ocean-going ships, so we would be the largest operator of ocean-going ships on the Great Lakes. We have the same concern that Mr Ouellette, Senator Sikkema in Minnesota and Congressman Hoekstra have that there is a problem on the Great Lakes with respect to indigenous species. It's existed for some time now. We believe that the deep-sea ballast exchange, which is now imposed on all ships that come into the Great Lakes, is effective in some considerable way in addressing the problem. It's unlikely that it's 100% effective.

The real issue, I think, is one that we haven't raised here but let me give you an example. A lot of ships that come into the lakes, and our ships are in that category, come in fully loaded with cargo. If we bring steel, for example, from Antwerp, we load steel in Antwerp, we come up through the St Lawrence River, through the St Lawrence Seaway. We bring steel, for example, into Detroit for Thyssen's plant. So until we essentially come in to unload the steel in Detroit, we're carrying very little ballast water in our tanks because the ship is full. But there's always going to be a film, if you want, or an amount of ballast water because the pumping systems on ships are such that you cannot absolutely take out everything that is in the tanks.

Fednav's fleet is a very modern fleet. We're building ships at this moment. In fact, we've taken delivery of a number of them this year and we're taking delivery of a new one in September, so we have a fleet of very modern ships. The ballast tanks on those ships are designed to allow for the most possible removal of ballast water, but there's always going to be something in the bottom of the tanks no matter what you do.

This condition, the so-called NOBOB, no ballast on board, is the issue, I believe, that is causing the most concern to the US Coast Guard. To the extent that a ship comes into the Great Lakes through the St Lawrence Seaway in a NOBOB condition, it is not therefore subject to deep-sea ballast exchange because, it is viewed, there is no need because essentially you're not carrying any ballast, you're carrying cargo.

When we bring the vessel in to Detroit to unload the steel, we then take ballast on in Detroit, in the river, and that ballast water gets mixed up with whatever sediment has been left from wherever the port is that we would have last changed; for example, in Antwerp. Then we would take the ship from Detroit to Thunder Bay or to Duluth to load grain, and when we're loading grain the ballast would be taken out in the port of embarkation. Then the ship would leave, let's say, Duluth full of grain, having unloaded in Duluth the ballast water that it took in Detroit, and make its way back out through the system back to Antwerp. It's not a shuttle service, but that's a standard trading pattern for our ships: Europe into the lakes and into ports in the United States.

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The issue of NOBOB, then, is an issue because these ships are not subject to inspection when they come into the Great Lakes because for all intents and purposes they're not carrying any ballast. But there is this film, this sediment on the bottom.

The perception out there is that foreign-flag ships in particular—because Mr Ouellette's legislation and Senator Sikkema's latest draft of his bill and Congressman Hoekstra's legislation are all aimed at those ships—are ones that are bringing the problem into the lakes and that in fact the ships operated by the Canadian lakes fleet and the US lakes fleet are being largely exempted by the legislation on the basis that all they're doing essentially is moving the stuff around in the lakes; they're not really introducing the problem. It's the foreign-flag vessels, those that go out in the ocean, those that are trading around the world, that are viewed as the introducers of the problem and hence the ones that these bills are being aimed at.

In fact, the ships that are trading internationally—and there are all kinds of ships trading internationally. We are very proud of the way we operate our ships. We're a large operator on the lakes. We operate very modern ships. We have management practices aboard those ships that we believe go some considerable way, in addition to the deep-sea ballast exchange, to ensure the tanks are cleaned out regularly. They have to be for class purposes. Also, because of the water levels in the lakes and because we're trading through a system which limits the size of vessels trading, there's no advantage to an international ship owner to bring unnecessary ballast into the lakes. It's just depriving that ship owner of the ability to bring cargo. So ships that are coming into the lakes by and large, and certainly our ships, come in and they have as little ballast as possible on board. To have anything more than is absolutely essential—because you can't remove it all—they're being deprived the ability to carry cargo. We're not paid to carry ballast; we're paid to carry cargo.

We believe that if you combine the deep-sea ballast exchange which exists now, and quite honestly the Great Lakes are the only jurisdiction in North America, I believe—California has legislation requiring deep-sea ballast exchange, and Washington state, but the Great Lakes have had deep-sea ballast exchange for some time



now. If you combine that deep-sea ballast exchange with the management practices that are prevalent in companies like ours—in fact, we are participating with the Michigan Department of Environmental Quality in having the management practices that companies like ours adhere to now applied across the board, which again will go some way to reducing the problem of the introduction of these species.

The last issue is, all right, if that doesn't allow you to entirely solve the problem, which is conceivable, then what is a third possibility? That possibility could go either way. It's could be technology, where you would have built into ships systems whereby when ballast was taken on there's a filtration, or when the ballast is released it's filtered. But the technology in that regard and the size of the equipment that's being tested this summer up in Duluth are such that it's not practical at this point, because they haven't been able to develop systems that allow for the discharge and intake of ballast water. You're talking about an enormous amount of water that's taken on when a ship is taking on ballast, and it takes it on very quickly because as it's unloading cargo it has to take on water to compensate for the loss of cargo. The lake ships, for example, these self-unloaders, can discharge a ship—and I'm not a domestic fleet operator but I think it's—

**Mr Campbell:** It's 6,000 tonnes an hour.

**Mr Robichon:** So it's an awful lot of cargo being discharged and an awful lot of water therefore being taken in.

Under Senator Sikkema's bill and under any bill that's trying to rush to solve this problem on the spot, people are looking at the possibility of adding chemicals to the tanks of ships. Chemicals have their own problems, and I'll stop talking after I say one more thing. The problem with the tanks on foreign-going ships is that because we take on salt water in our ballast tanks, which is not the case for the domestic fleet, the tanks of foreign-flag vessels are lined with very sophisticated epoxy resins to prevent corrosion. What we are testing now with the paint manufacturers, given that we're building these ships as we talk, quite honestly, is to see to what extent you can add a chemical like chlorine to ballast water and what the effect will be on the tank coatings. The last thing we need to do is to start imposing chemicals the effect of which is to undermine the coatings on tanks, therefore exposing the ship to concerns of safety.

On that point let me finish. I accept very much the initiative taken by Mr Ouellette. In fact, his bill was the first one. There have been a myriad of bills that have come out since the Ontario bill. I believe the way to deal with this is for everybody, all the states and provinces and the two federal governments, to work together with industry in coming up with a way of dealing with this. But I think we should be very careful about rushing into doing something to meet certain arbitrary time periods, because those arbitrary time periods, which is the one year referred to, essentially only allow for chemicals because there is no technology that exists today or that is

foreseen to exist within the next year that can deal with it. So you're talking about perhaps replacing one problem with another problem, and that is forcing ships to carry chemicals in their tanks and discharging them in various jurisdictions, some of which—for example, Australia wouldn't allow one of our ships to go in if it had chlorine in its tanks; we simply couldn't unload. So there are implications to the third level, if you want, and I think those implications are such that the rush to be seen to be doing something should be tempered somewhat by fully understanding what works today, how it's working today, and to allow the technology, or biocides or something, whatever it's going to be, to advance, but to advance to a point where the safety of the ship isn't put at risk.

**The Chair:** Thank you very much. That allows us a couple of minutes per caucus for questions. Mr Bisson, we'll start with you this round.

**Mr Bisson:** I don't know if you understand French, but when I was talking to Mr Streeter, the question I was asking was what you raise in your particular brief, which is, is there a danger of the province taking on this issue, which really should be a national issue being dealt with by the feds? You've already dealt with that and I hear where you're going, because I believe there is a problem. I'm not an expert on this. I'm sure the member brings this forward with all of the research that is to be done. But I wonder, if Ontario ends up with a regulation or a law that's different from the neighbouring states or Quebec or the Maritimes, whether we end up with sort of an artificial situation when you're trying to pass merchandise across by way of ships, and I sympathize with that point. I just wonder if you want to expand on that, and then I have a question.

**Mr Robichon:** If you look at the trading pattern of our ships, which would go into Detroit or Cleveland or Toledo or Milwaukee or what have you, we're travelling throughout the lakes unloading cargo and taking on different cargo. If every state were to do like Ontario or Michigan or Minnesota, we would have the potential, if you assume Quebec would have some role to play and assume it entering into the system, of eight states and two provinces imposing regulations that may not be complementary of requiring permitting on essentially an international voyage of trade and commerce. You'd be subject to a myriad of regulations that would have really quite a negative effect on trading into the lakes.

**Mr Bisson:** Do I also understand correctly that part of the problem is that some of the science and technology that's needed to come up with a policy that deals with this in some way that makes some sense both to the environment and the shippers isn't there yet? Is that the other part?

**Mr Robichon:** The technology in terms of devising a system—this summer they're testing a filtration system with ultraviolet and they're testing it on a small scale to see whether the ultraviolet combined with the filtration kills everything or kills as much of everything as possible. The problem is that the technology being tested is small, and when you take the concept and the technology



and you make it work on a ship, for example, the size of our ships or the 1,000-foot lakers that the US-flag fleet operates, you're talking about putting on ships equipment that would take, without exaggerating, three or four times rooms this size just for the filtration of ultraviolet. The technology hasn't developed to the point where it can work effectively.

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If you assume that chlorine is a relatively inexpensive chemical, then you can say: "If chlorine is inexpensive, if it's fairly easy to add to the tanks, then what's the problem with chlorine? Various provinces and the states are using chlorine to deal with their water systems."

The problem is that it's not universally accepted as being a chemical that everybody thinks is wonderful. It hasn't been tested fully as to its effectiveness in salt water, which is what we are carrying in our tanks. From our perspective in particular, it also hasn't been tested to see what effect it has on the coatings of the tanks, which may put the ship at risk.

**Mr Bisson:** I have a very quick question to your counterpart. What percentage of ships that go into the Great Lakes are actually ocean-going as compared to domestic fleet?

**Mr Campbell:** Up to the last couple of years it's been about 50-50.

**Mr Ouellette:** You mentioned chlorine. Do you know if chlorine is effective on sediment as well?

**Mr Robichon:** They don't know. If I may answer the question, the perception is that we're carrying an enormous amount of sediment in the tanks of these ships, and that's just not true. There is very little. Last week, when we appeared before the department of environmental quality in Michigan, we produced pictures of our ships—a new ship, a three-year-old ship, a five-year-old ship, a 17-year-old ship—and the pictures all reflected tanks, but there is very little sediment in the tank. This perception out there that we're carrying enormous amounts of sediment is just absolutely false. But the answer to your question is no, the effectiveness is unknown.

**Mr Ouellette:** I realize that it may be difficult and the shipping industry may not view this favourably; however, would the shipping industry also be responsible or want to take on the actual \$25 million to \$30 million for Ontario Hydro alone for zebra mussels? We have to look at alternatives and there has to be a way to go about this, and somebody has to take the lead. To date, there hasn't been a lead by the feds in this area, and until we started pushing very hard—we're starting to see other jurisdictions, as you mentioned.

The current requirement is a guideline, as Mr Streeter has said. The US Coast Guard is participating in that in doing the inspections; however, it's only a guideline so far.

**Mr Robichon:** But it's mandatory in the US. For ships coming into the St Lawrence Seaway, which you have to go through, there's a mandatory ballast exchange.

**Mr Ouellette:** Yes, but if they come into an Ontario port, it's still under the guidelines as opposed to—

**Mr Robichon:** It's almost academic, because you can't get to an Ontario port without going through the seaway. If through the seaway the US Coast Guard requires mandatory ballast exchange, the problem has been solved.

**Mr Ouellette:** There are also problems with the inspections, I understand, from what we've heard from the jurisdictions in the States, with the Coast Guard.

**Mr Robichon:** I've heard that. A US Coast Guard chap was at the meeting in Michigan last week. Patrick Garrity, who is from the ninth district US Coast Guard, indicated there has been absolutely no problem with compliance whatsoever.

**Mr Ouellette:** Was he at Senator Sikkema's hearings that came forward where there was some major discussion—

**Mr Robichon:** I debated with Senator Sikkema in Duluth. I've been speaking because this affects Fednav in a big way and because we're the largest operator on the lakes. We believe the way to deal with this is that there should be either regulations or guidelines, whatever you want to call them, but they should be regional. It's not the way to go to have every state and province decide they're going to go their own way with their own regulations, their own permitting. It's going to be an ineffective way of trying to solve a problem.

**Mr Ouellette:** One of the difficulties from the shipping industry now is that there are eight jurisdictions plus two states effectively that could be involved in this bringing various legislation forward, and the difficulty is requiring unified legislation for all of Canada. What will the response be from the industry when Canada comes forward with guidelines in conjunction with the States? Will that satisfy it or will they be asking for a requirement that's going to comply worldwide?

**Mr Robichon:** Through the Shipping Federation of Canada, which represents the international fleet, we have been very active—and I think Mr Streeter would confirm that—in working out these guidelines, which are supposed to come out in September. Quite honestly, in terms of the process that we're going through now on the lakes, we—Fednav, the Shipping Federation of Canada—have been outspoken from day one in saying, "We recognize there's a problem, but the way to deal with it is to deal with it regionally and not by individual states and provinces." We've been absolutely straightforward on it, consistent. I said the same thing to Senator Sikkema. I am saying the same thing to you. I will say the same thing to the people of Minnesota and New York and whoever else is doing it. It's just not the way to go about it, various jurisdictions taking on different ways of resolving one problem. It's a problem with the lakes.

**Mr Ouellette:** What do you as the industry feel is the most cost-effective method in dealing with the problem, and at what success rate?

**Mr Robichon:** Senator Sikkema's original bill said the water in your ballast tank had to be sterilized. I think he's accepted the fact that sterilization is not feasible. You don't have anything that's sterilized these days.



What is effective? We believe the deep-sea ballast exchange combined with the management practices that companies like ours adhere to—that will be made applicable, if you want, across the board—those two things taken together will bring the effectiveness of dealing with the problem to a very significant level, such that, for example, the state of California and the state of Washington, both states being fairly environmentally conscious, have said that's good enough for them. Deep-sea ballast exchange satisfies California and satisfies the state of Washington. For some reason, it doesn't satisfy the Great Lakes. I'm not sure why, quite honestly.

**The Chair:** Mrs Munro, do you have a fairly brief question?

**Mrs Munro:** Very brief. I wanted to come back to an issue that you began with, and that was the question of salinity and whether or not you are satisfied in your own mind that that guarantees various aquatic nuisance species are killed, that kind of testing.

**Mr Campbell:** At this point, from work that had been done in the past, they have developed a standard of salinity where there is an assumption that it would kill freshwater organisms. That's really what they're killing. They're trying to kill the freshwater organisms so they don't have an opportunity to live through the voyage. The problem is, there are some freshwater organisms that are resilient to salt, so that's another challenge we're going to be dealing with.

**Mrs Marie Bountrogianni (Hamilton Mountain):** You've alluded to this, and I want a more clear-cut answer, given this isn't my area of expertise by a long shot.

**Mr Bisson:** I thought you were the expert.

**Mrs Bountrogianni:** No, that's my husband. I didn't get this in time.

Is there conclusive research that the ballast water guidelines outlined in this bill will solve the difficulty here that the bill is trying to address? Is there conclusive scientific research?

**Mr Campbell:** The ballast water guidelines, as stated in this bill, are largely referring to what's taking place right now, which is mandatory testing in Montreal, a voluntary ballast exchange program within our national government. My reading of Mr Ouellette's bill is that it's largely repeating and emphasizing to make sure that these ships that do come into Ontario ports are in fact going through that process. But it's all we have right now. They are being adhered to in Montreal. Ships are not coming in that do not meet those standards, and "those standards" refers to those of the Canadian Coast Guard that are being used right now in Montreal.

**Mrs Bountrogianni:** The other question is, given that the federal government or the two governments of US and Canada have not gotten together as far as common regulations, could this not be politically an impetus for that to occur?

**Mr Campbell:** We hope so. As Mr Robichon said, we're really pushing right now. In fact, since 1988 the Shipping Federation of Canada, which represents salt-

water vessels in the Canadian market, has been trying to get that kind of coordination. What's happening here in Ontario, Michigan, Minnesota and New York has gotten a lot more broad-based support within the industry to say, "Listen, Washington and Ottawa, let's get your act together and find some coordination here."

Mr Robichon and I are meeting with an ADM in Transport Canada on Wednesday to see where we can go from here. We've already made contacts with the department of international trade and foreign affairs to deal with the higher-level individuals in Washington, so we're hoping that this and other measures have pushed things along. But it will make it more difficult if legislation like this goes forward, even in the short term, because we run nine to nine and a half months a year into the Great Lakes, and we're already dealing with a huge amount of red tape and regulation within eight states, two provinces and two national governments. This is just one more shortcoming that people are looking for, I would assume, to not come into the lakes and upset the already fragile economics of Great Lakes shipping.

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**Mrs Bountrogianni:** One quick last one. Shipping is a huge industry. Would the \$10,000 fine have any effect at all? I know that's not the point. I'm just saying, would that have any effect at all? We've received e-mail that it's not enough.

**Mr Robichon:** I don't think it's a question of whether the fine would—it's a question of, is this the right thing to do? And we don't believe it's the right thing to do. If this legislation were to become law and there were regulations under it aimed at impeding the flow of shipping on the Great Lakes, then the issue of the fine might be complicated by a challenge to the constitutionality of the legislation, quite honestly. It's the same thing we had with Senator Sikkema.

We believe all these things are being done the wrong way. They're just dealing with it by individual initiatives, which together would be great if they were consistent. But fending off different regulations brought in by different states purporting to exercise their jurisdiction, all you're going to do—I said the same thing in Duluth—is have a bunch of lawyers fighting legislation instead of concentrating on trying to solve the problem. I believe that very firmly.

**Mrs Bountrogianni:** I felt obligated to ask that question, given a constituent e-mail.

**The Chair:** Mr Levac, you had a question?

**Mr Levac:** Just maybe a question of action. I'm concerned that Mr Ouellette's intent, which was to offer some type of solution to a problem—and we're all talking about it. Every presentation I've heard and all the packages we've received indicate that, "Yes, we've got a problem and we want a solution to this." What I'm hearing and what I'm reading is the IMO, and the government person here, the federal representative here, is making an indication that indeed we are making strides but maybe they're not as quick as what some people want us to do



and we're trying to co-operate and pull all the partners together.

I'd like to know if you have a suggestion besides the fact that you've made a presentation to us today that said: "We're doing that. We're trying to meet with people." What I don't want to hear is a balance between Mr Ouellette's intent, which is, "Look, we've got a problem and we've got to deal with it," which I believe is noble and honest, and, "But it's the feds' fault." What I want to hear is, "What is the solution?"

**Mr Campbell:** We've been working quite closely with the federal government on this. As I said, we're trying to get Washington going. A group has been put together by the Michigan Department of Environmental Quality, which has been largely mandated by the governor to deal with this. They've got subcommittees working on everything from new technologies to ballast water management to the economics of the issue. Work is being done as we speak.

**Mr Levac:** Can you give us an honest timeline when you perceive any of these things happening?

**Mr Robichon:** We're participating at the IMO level; Mr Streeter made reference to that. It takes time to get all the nations of the world to agree on how to solve this problem. It's a long process. The Great Lakes have been in the lead, because they're an identifiable body and there have been problems in the lakes. In fact the mandatory-ness of the deep-sea ballast exchange applies only to the Great Lakes.

The timeline, quite honestly, has advanced to the point that the management practices that companies like ours adhere to and have adhered to, and that we'd like to think will now be imposed on all international operators into the lakes, has come out of this process. We have taken our management practices and we've got the other companies and said, "Look, this is a good way of moving one step above deep-sea ballast exchange."

The problem we have is the third thing, either technology or chemicals. The only one the Michigan Department of Environmental Quality and, we believe, the Council of Great Lakes Governors is going to focus on—because they're acting within this one-year period, which Senator Sikkema has imposed, or at least is threatening. He hasn't imposed it yet, because his bill isn't law, but he's saying he wants to see action within a year. The only thing that can be done within a year is adding chemicals. We simply are not sure whether the chemicals are effective and whether it's the right thing to do. We're all being driven now to deal with chemicals, because it's the only thing that can be done in addition to what is being done now that can be dealt with in the framework of one year. That's the concern we have.

**Mr Levac:** Thank you for your presentation and for the previous written presentations, and thank you for your patience, Mr Chairman.

**The Chair:** Thank you, Mr Levac. Gentlemen, I'm loath to do this—as Chair, I can't remember the last time I asked a question of witnesses—but just to help me out here, both you and Mr Streeter have mentioned the

guidelines that were adopted. I see in his presentation that the coast guard started those on May 10, 1993—the ballast water exchange requirements and subsequently the tests.

Is it your understanding that there have been no new organisms brought in since then, or should I take from the Ontario Federation of Anglers and Hunters that the most recent invader, the fish-hook water flea, arrived after the date of those inspections?

**Mr Campbell:** No one knows. They could have been here for years. They could have been here pre-1993 and nobody found them, because you're moving a species into a new environment, a huge environment in which they could have been incubating for years and we wouldn't know about it.

There are scientific statistical analyses that can be done that I've read about, but in large part (1) We don't know, because they could have been here for years and (2) we might be finding them because now we're actually looking for them. The best we could suggest is that the system is working, but who is to say? I wish we could answer better.

**The Chair:** I appreciate your candour, and I appreciate your taking the time to come before us. We actually went a little over, but there were good questions from all around. Thank you very much, and I appreciate your taking the time to come before us today.

Under the subcommittee report we have accepted, we were then going to move to clause-by-clause consideration of the bill. We will do that now.

Mr Ouellette, if you want to make any general comments, or any other members of the committee, you can do that at any point in this process, but I will pose the first question.

Are there any amendments, comments or suggestions on section 1 of the bill?

**Mr Bisson:** I have a general comment on section 1. I'm interested that Mr Ouellette brings this bill forward. I thought he came from a government that didn't believe in regulation—open it up to the marketplace and allow the powers that be. We all know that according to the Conservative mantra, environmental legislation is bad. I'm encouraged to see there's a little bit of common sense somewhere within the government and that they recognize there is a role for government. This is just one example. It may not be the ideal piece of legislation, but am I to read that all of a sudden your government has woken up and realized it has responsibilities?

**The Chair:** I thought Mr Bisson's question would go on much longer. Mr Ouellette, you don't have to reply, but if you feel inclined.

**Mr Ouellette:** If Mr Bisson looks on the record, he will notice the recommendation for sulphur reduction as well. I had meetings with the federal government, with international agencies, with General Motors, and quite a period of time before the federal government did any announcement on sulphur reductions as well. If you look at the record, certainly the actions speak for myself and what I think in a lot of these areas.



**Mr Bisson:** So the answer is, there is a need for environmental regulation.

**Mr Ouellette:** We all stand on our own.

**Mr Bisson:** OK, thank you.

**The Chair:** Any further comments on section 1?

**Mr Ouellette:** I have an amendment.

**Mr Bisson:** On your bill?

**Mr Ouellette:** Yes, it's a drafting error.

I move that the definition of "ballast water control guidelines" in section 1 of the bill be amended by striking out "section 6" and replacing it with "section 5."

It was a drafting error in the bill when the bill was first drafted.

**The Chair:** Any further discussion on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

**Mr Bisson:** I just have a question of leg research. If you go to the first page of the bill, I just wonder why they drafted it that way. In the English section they refer to the French part of the bill, and in the French section to the English part of the bill. Am I missing something?

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**The Chair:** I think your question should actually go to leg counsel, not research.

**Mr Bisson:** Sorry. Wrong person.

I'm just reading the bill. It says: "Great Lakes system" includes the Great Lakes, any navigable waters connecting the Great Lakes," etc, and in brackets, "réseau des Grands Lacs." Oh, it's OK. Sorry. Don't go there. It's fine. I've answered my own question. If I had read further, I would have understood what you were doing.

**The Chair:** Any further comments on section 1 of the bill? Seeing none, I'll put the question. Shall section 1, as amended, carry? It's carried.

Any comments or amendments on section 2 of the bill?

**Mr Bisson:** Just a general comment, and I don't want to belabour this, but I have some concerns about trying to do this from strictly a provincial standpoint. I understand what you're trying to do here. You're trying to push the debate to the point of getting the feds to respond, and hopefully they're going to do what needs to be done. But I just want to put on the record as a New Democrat that I support what you're doing in intent, but I really believe we need to have a national policy that also deals with the United States, so that we have a policy that is more in keeping with trying to deal with the issue not just from Ontario's jurisdiction but from a national one. I commend what you're trying to do. You're trying to push the yardstick, I guess.

**The Chair:** Any further comments?

**Mr Levac:** If it's permissible I'd like to ask Mr Ouellette that question to see whether he agrees with the Chamber of Maritime Commerce and the people who have made presentations today regarding the concern they have of piecemeal legislation with all the stakeholders versus the attempt to get the one body involved in all of the negotiations. Could you comment on that?

**Mr Ouellette:** As the Chamber of Maritime Commerce had mentioned, there are guidelines out there. According to them, they're being adhered to. According to others, there is not compliance. If they're being adhered to, in their eyes, then it shouldn't be a problem passing legislation that's already being adhered to.

The reality is that the feds have not drafted legislation that is going to take care of problems regarding zebra mussels or the spiny water flea. I might add, spending quite a bit of time on Lake Ontario, that I never actually saw spiny water fleas until two years ago. That was the first time I had ever seen them. That's from 1986 to 1990, and I was on virtually three or four times per week.

The intention is that somebody has to take the lead on this, and quite possibly it should be the province. This is minimal legislation. This is a way which doesn't exclude the feds from drafting legislation that says, "OK, you're going to have to do a little bit more than what they say in the province of Ontario." The jurisdictions I spoke to, all the states, were very clear that, yes, this would be a very good minimal thing we should have. So even if further federal legislation is drafted, this should be part of that package.

**Mr Levac:** May I continue, Mr Chair?

**The Chair:** Absolutely.

**Mr Levac:** Were you hearing, then, from your presentations—and you've given us reason to believe you've been in concert with a lot of the states that were involved in this—that they feel the same way about their federal government in terms of looking for leadership, and once that's done they too believe the federal government on the United States side would co-operate and start looking at getting together with the Canadian side?

**Mr Ouellette:** Yes. I mentioned a quote from Senator Sikkema when I was there, if I can quickly find it. Actually I can't, but he goes on to say that in that the federal government in the States as well is not proceeding with legislation that protects the Great Lakes, then somebody else has to.

**Mr Levac:** I'll continue, and instead of questions maybe make a statement or two. Just the fact that number 2 applies directly to the Great Lakes, it also includes the impact it has in the United States and has an impact on what the federal government does and on what the federal government in Canada does. Maybe an observation: Success has been very long coming when the federal government is used as a whipping boy versus "Come to the table; we need to discuss this." Have you designed a tactic that you believe would be successful in getting your federal partners to the table? Have you been lobbying, or have you done anything that has tried to get them, because my understanding is—Mr Streeter has made it clear to me in his presentation, and I have nothing to go against his word—that they are indeed doing something as opposed to nothing. I want to make sure I could bring that together with some kind of conscience that says: "Yes, we understand what Mr Ouellette is doing. We believe his track is the correct one." I would concur with my colleague from the NDP that the



environment is of utmost importance to all of us, and that there's a way to get them to the table.

**Mr Ouellette:** As the Chamber of Maritime Commerce has said, this is the first bill that is out there. We contacted every jurisdiction on the Great Lakes, and none of them to date had any legislation coming forward at all. It wasn't until this bill came forward that we received a response. There may have been something going on. Quite possibly, jurisdictions didn't want to tell us it was going on. But we did contact every jurisdiction on the Great Lakes. As the Chamber of Maritime Commerce said, it wasn't until this first bill that they saw a flurry of them coming out afterwards.

**Mr Levac:** Thank you for that. Along with that, then, my comment would be—and I'll say it guardedly, because that's what I did the last time I spoke in this room—if the intent is to get the best possible legislation for us, and if the intent is to pull us all together to create the environmental legislation that is needed, and I don't think anyone denied that legislation was needed, then I support the bill. Mr. Ouellette knows—we spoke before about this—that I know and appreciate his intent, and I support it. However, that being said, I do want to say guardedly that my concern lies with creating another battleground with the federal government simply because that's the appropriate thing to do on an ideological base, versus what's good for the environment. I'll make that statement very clear and straight.

**The Chair:** Thank you, Mr Levac. I think you'll find that one of your colleagues, Mr Patten, would be the first to suggest that private members' bills can become the foundation for something bigger and more encompassing, as he did with his bill on the changes necessary to the Mental Health Act.

**Mr Levac:** I appreciate that, and that's what I'm basing it on: the fact that Richard and I had a discussion about that, and our hope and desire is to try to see another way to do things.

**The Chair:** Thank you very much.

Any further comments on section 2? Seeing none, I'll put the question. Shall section 2 carry? Carried.

Seeing that we have no other amendments tabled before us, I'll ask the question for all the remaining questions. Shall sections 3 through—

**Mr Bisson:** Question on 3.

**The Chair:** OK. Any comments on section 3?

**Mr Bisson:** I just want to make sure I understand what you're doing here. If I understand what you're doing by way of this bill, technically it's to say that it would force operators of ships, when in Ontario waters, to basically adhere to the water control guidelines. That's all you're really doing.

**Mr Ouellette:** No. Section 3 specifically—if I may, Mr Chair?

**The Chair:** Absolutely.

**Mr Ouellette:** You'll notice it says "shall not dock ... at a provincially or privately owned dock...." That excludes federal ports. This is not an intent to enact—

**Mr Bisson:** I don't think you follow my drift. That's not where I'm going. What I'm saying is that what you're trying to do is that if the shipping operators are not doing what they should do, according to the guidelines, you have an authority provincially to force them to do it by way of penalty. That's all you're doing here. You're not invoking a new technology or anything like that.

**Mr Ouellette:** That's right.

**Mr Bisson:** It's pretty innocuous. I don't get why they would be opposed to that. Basically, that's what they're supposed to do in the first—don't the feds enforce their own guidelines?

**Mr Ouellette:** They're only guidelines, and there is no stipulation that you must comply with the guidelines, although it's a guideline that's expected. My understanding from when I was in the States and we spoke about the US Coast Guard was that the waybills and that dictate where and who and how the ship will be inspected.

**Mr Bisson:** But let me understand something—and I wish the gentleman from the chamber was still here. If I understand how this works, he was mentioning there were occasions last year when they sent a couple of ships out of the port of Montreal because they didn't meet the guidelines, so they sent them back down river to redo their bilges. They must have done that through some sort of authority.

**Mr Ouellette:** The US Coast Guard is doing the inspection in Canada.

**Mr Bisson:** In the port of Montreal?

**Mr Ouellette:** Yes.

**Mr Bisson:** I didn't know that.

**Mr Ouellette:** They could be coming through there, and they're still being inspected there. We didn't ask that question, or didn't ask where that ship was destined. If it was a US port, then they would have had that authority.

**Mr Bisson:** I'm just wondering. I guess where I'm coming from is that I would think that if there are water control guidelines when it comes to how you deal with bilge water, then there would be some sort of authority by the federal government to act on that if they're not following the guidelines. All you're attempting to do, in facilities that are under the jurisdiction of the province, is make sure we have the ability to enforce their guidelines, and not create a new set of guidelines at this point.

**Mr Ouellette:** Essentially, yes.

**Mr Bisson:** All right. Then I'm going to have a question when we get to section 5. I'm all right with 3. If that's what you're doing, I'm fine with it. Nothing new?

**Mr Ouellette:** No.

**Mr Bisson:** OK, thank you.

1700

**The Chair:** Any further comments? Seeing none, I'll put the question. Shall section 3 carry? Section 3 is carried.

Are there any comments or amendments on section 4?

**Mr Bisson:** Just give me a second. I read something here. Under your (b), what are you trying to get at here? I



understand what you're saying under (a) and (c). You're saying if there was—

**The Chair:** On section 4?

**Mr Ouellette:** I think that was section 3, Mr Bisson.

**Mr Bisson:** I'm sorry. I allowed it to skip by. Too late. We already did 3. I can't raise it.

**Mrs Bountrogianni:** Is \$10,000 enough?

**Mr Ouellette:** I wouldn't think so.

**Mrs Bountrogianni:** Do you want to make it more?

**Mr Bisson:** I'd be interested to hear leg counsel, because that was my question. I imagine the \$10,000 comes from somewhere. It has to be within the ballpark of what these offences are worth when it comes to statute, right? Is that why this \$10,000 is there?

**Mr James Flagal:** It's open to a committee to impose what penalty: \$10,000 is a particular amount that will appear in several provincial offences statutes. But if you look at stuff like the Environmental Protection Act or Ontario Water Resources Act or something like that, you'll see far higher amounts.

**Mr Bisson:** It's her question, so I should let her do it.

**Mrs Bountrogianni:** It's OK. This is good. I learned something. Coming from Hamilton and knowing that the fines for the steel company didn't necessarily do anything for a long time, I'm just asking, from your experience, is \$10,000 enough to deter?

**Mr Ouellette:** I don't think so. The reason I say that is because of the legislation on geoscience that I'm working on. There was a clause in there that we brought in for repeat offenders. You'd need to be able to increase that. At that time, I hadn't anticipated that in the legislation. Increasing it would allow courts to decide, for second- and third-time offenders, whether it was necessary.

**Mr Levac:** Then I would look to maybe adding to that now and seeking some kind of quiet eye contact for guidance on this. I, too, believe that if one company is responsible for repeat offences, they're snubbing their nose at \$10,000 saying: "That's chump change. Let's just keep paying the \$10,000. We get to do what we want to do." I would respectfully suggest then that an amendment would read, "And subsequent to second and third offences, the fine increases"—

**Mr Bisson:** Doubling each time?

**Mr Levac:**—"double each time." I would defer to leg authority to say whether or not those things are doable, but I'm assuming they are.

**The Chair:** I would certainly tell you that the amendments are acceptable. You could ask leg counsel to craft one that respects the intent that's just been brought forward. While he does that, Mr Bisson?

**Mr Bisson:** My question is to leg counsel and he's trying to draft an amendment.

**The Chair:** Go ahead, please.

**Mr Bisson:** I'm going to come back to the point that I was making. In various bills where we've dealt with the issue of fines, the way I understand it is, if you make the fine out of sync with what the other statutes are for similar types of things, the judge will just overturn the

decision, right? Is that why the \$10,000 is there and why there's no doubling and all that?

**Mr Flagal:** I don't understand. If it's not in the nature of a similar type of statute?

**Mr Bisson:** Yes. My understanding on various bills that we've dealt with is, when we've tried to increase the size of the fine as a deterrent, what leg counsel has told me before—and other committee members as well—is if you make the fine out of step with what is reasonable by way of other statutes, when the person who has been charged goes to court, they can actually have the penalty lifted on the basis that it's out of step, it's unfair or whatever. It's too great.

**Mr Flagal:** I'm not sure if I understand the concern. The particular statute will impose a fine. Let's say it's a particular type of statute that's similar to this one, this is an attempt to try and protect against pollution of the water, as I understand it.

**Mr Bisson:** Yes.

**Mr Flagal:** A similar sort of statute may be included in the Environmental Protection Act.

**Mr Bisson:** What is the range of fines in there?

**Mr Flagal:** If you give me a second, I can quickly go get that.

**Mr Bisson:** You follow my point, because we've been here before, where basically you try to get a fine increased in a bill and you could end up biting your nose to spite your face if the fine is out of sync. That's my understanding.

**Mr Flagal:** Under the statute the court is faced with the offence that's before it and the sentencing provision that is before it. I can't think off the top of my head of a particular situation where a defendant can say—just as an example; this is not the case—"But just a second, the Ontario Water Resources Act provides a fine which is much less," and this would be somehow unfair. With respect to the environmental laws, with respect to what sentence is provided, I can get that very quickly, if you'll just give me a second.

**The Chair:** Fair enough.

**Mr Bisson:** Maybe we can move on to section 5.

**Mr Levac:** I was going to say that to expedite what's going on, I don't mind coming back to this, but I don't want it to leave the table. I'll tell you why. If it speaks to the intent and the integrity of what it is we're trying to do, I personally believe that if we're going to give a \$10,000 fine, and it's going to be laughed—I'm speaking to my integrity of why I'm supporting it. I need to come back to this to make sure we're headed down that path. I understand what you're saying, but I'm saying, if that indeed is the case, then we'd better start moving all of them up.

**Mr Bisson:** I remember we got into this debate on a couple of bills before, actually in the last Parliament, where we were trying to deal with the issue of a penalty. What we were told at the time was, if we made the penalty so great that it was out of step with what was reasonable by way of other statutes, the judge would just



look at it and say, "This is a badly drafted law," and could decide to do anything.

**The Chair:** I think there's consensus around the table to stand down section 4 and await the response of the legislative counsel.

We'll move on to section 5. Are there any comments or amendments to section 5?

**Mr Bisson:** This is the crux of it. If I understand what you're doing here, you're saying that by way of regulation you will be able to develop new water control guidelines.

**Mr Ouellette:** It's a standard drafting procedure to have that in there, that the Lieutenant Governor in Council may draft new regulations. The intention is not to draft new guidelines.

**Mr Bisson:** If it's not the intent, I'm just wondering. The way I read it, it says, "May make regulation prescribing ballast water control guidelines."

**Mr Ouellette:** Regulations have to be established for the piece of legislation. However, those regulations will be worked through in conjunction with what currently is—

**Mr Bisson:** I just want to be clear about what I'm doing here. This is not to give power to the bill to go out and create our own set of water control guidelines outside of what's going on in other jurisdictions?

**Mr Ouellette:** No.

**Mr Bisson:** Then I need to get leg counsel to let me know if that's what happens here, or maybe Jerry, if he can help. I don't know. I know it's a standard—

**The Chair:** I think we'd best stand down this section as well until leg counsel has returned. Do committee members agree? Agreed.

That takes us to section 6. Any comments or amendments to section 6 of the act? Seeing none, I'll put the question. Shall section 6 carry? Carried.

Section 7 of the act: Are there any amendments or comments? Seeing none, I'll put the question. Shall section 7 carry? Carried.

Shall section 8, the short title of the bill, carry?

**Mr Bisson:** We're calling the act the Great Lakes Environmental Protection Act.

**Mrs Bountrogianni:** It's a little too much, isn't it? We aren't really protecting the Great Lakes; we're doing a small bit to protect the Great Lakes.

**The Chair:** I thought I heard "Carried" already.

**Mr Bisson:** Whoa. You never said, "Any discussion or comments?"

**The Chair:** OK, then we'll ask the question again. Are there any further comments?

**Mr Bisson:** Yes. I'm just wondering if you're averse to just changing the title to something dealing with bilge water. Do you know what I mean?

**Mr Ouellette:** Ballast; bilge is different again.

**Mr Bisson:** Well, I'm not a seafarer; I'm a pilot. It gives you the impression this is a bill that deals with the encompassing issues of—

**Mr Ouellette:** Quite possibly we should stand that down, because it was leg counsel who recommended that be the name of it.

**Mr Bisson:** I'm not wedded; that's fine. I'm not going to worry about it.

**The Chair:** Any further comments?

Seeing none, I'll put the question. Shall section 8, the short title of the bill, carry? Show of hands.

All those in favour? Opposed? Section 8 is carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

With that, we'll take a short recess and await the return of legislative counsel.

**Mr Bisson:** Can't we go on to the next item? We had a motion.

**The Chair:** If that's the will of the committee, we could certainly do that.

**Mr Bisson:** We could get that out of the way, right, Toby? I'm asking unanimous consent that we can move on to—

**The Chair:** That we would stand down further consideration of Bill 15 in abeyance until the return of legislative counsel?

**Mr Bisson:** Yes.

**The Chair:** The committee agrees with that? Agreed.

## COMMITTEE BUSINESS

**The Chair:** Mr Barrett, I believe you have something for us.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** I have a notice of motion. On behalf of Ted Chudleigh, MPP, Halton, I move that pursuant to standing order 124 the committee consider establishment of new legislation, entitled the Professional Foresters Act, 2000.

**The Chair:** Thank you. Any discussion?

**Mr Bisson:** Only to say this is long overdue and you'll have support from us at 110 miles an hour.

**The Chair:** Thank you very much. Mr Levac.

**Mr Levac:** Does this motion give us direction as to when we plug that into the timetable of when we deal with that?

**The Chair:** Yes, the subcommittee had agreed we would deal with it this Wednesday. But we need this motion passed to empower the committee, under standing order 124, to deal with it.

**Mr Levac:** That's why I mentioned it, because I wasn't sure how it clicked it. Now that I know that, no problem.

**The Chair:** Thank you very much. Further discussion?

**Mr Bisson:** For the record, I just wanted to say that the NDP is supportive of trying to speed this thing up. There have been various attempts by members to deal with this over the last 10 years that I've been here. Unfortunately, all governments since I've been here have not supported this, so let's hope that yours does, even though you guys voted against it last time.

**The Chair:** Any further discussion? Seeing none, I'll put the question. All those in favour of Mr Barrett's motion? Opposed? The motion is carried.

Again, pursuant to the discussions of the subcommittee we will consider standing order 124, the request for a new Professional Foresters Act, 2000, at the next meeting. The clerk advises me we already have seven groups that have expressed an interest in speaking to that bill.

Having dealt with that and still awaiting the return of legislative counsel, the committee will stand in recess until his return.

*The committee recessed from 1712 to 1731.*

GREAT LAKES ENVIRONMENTAL  
PROTECTION ACT, 1999  
LOI DE 1999 SUR  
LA PROTECTION ENVIRONNEMENTALE  
DES GRANDS LACS

**The Chair:** I call the committee back to order for the purpose of considering Bill 15. When we broke, Mr Flagal was seeking to get answers to a couple of questions that had been posed and to craft a couple of amendments which might deal with the concern about the fine structure.

Let's start by getting section 4 back on the table. Are there any comments on section 4 of the act?

**Mr Levac:** As this has been modified, can I assume then that the research was done to show that it is doable, to Mr Bisson's question?

**Mr Flagal:** Yes. I checked with legislative counsel. If this is a private member's bill, which can provide offences just like a government bill, the question was posed, "What happens if the fines are out of sync with the statute that regulates matters of a similar area?"

That is fine. There is no problem in providing a different penalty. I think there is convention in drawing upon a particular amount and people will say, "What is the sort of practice?" That's just a practice. It doesn't necessarily mean that if a private member feels that a matter requires a particular type of penalty they cannot impose it in the bill. They can.

That's what I think got confused; \$10,000 is often the practice, I guess you would say, for many bills that come forward. But if you wanted to look, let's say, at a statute—in this case, I'll look at the Ontario Water Resources Act—and provide for the similar type of penalty as imposed under that particular act, you can.

**Mrs Bountrogianni:** Now I agree with the title.

**Mr Levac:** Thank you for that.

*Interjections.*

**Mrs Bountrogianni:** I'm serious.

**Mr Levac:** With a nod from Mr Ouellette, if that satisfies what it was we were talking about when I asked the question about a friendly amendment or an amendment to what the act is, if that's acceptable, I would it move it.

**The Chair:** Mr Ouellette, if you're amenable to that, Mr Levac is prepared to move this amendment. I'd like to hear discussion.

**Mr Levac:** I guess what I'm trying to do is make this as friendly and portable as possible in terms of what our intention is here for the environment.

**Mr Ouellette:** Yes, that's fine.

**The Chair:** Thank you. Mr Levac, if you'd like to read the amendment into the record.

**Mr Levac:** I move that section 4 of the bill be struck out and the following substituted:

"4(1) Every individual who contravenes this act is guilty of an offence and is liable,

"(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$20,000; and

"(b) on each subsequent conviction,

"(i) for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$50,000,

"(ii) to imprisonment for a term of not more than one year, or

"(iii) to both such fine and imprisonment.

"Penalty: corporations

"(2) Every corporation that contravenes this act is guilty of an offence and is liable,

"(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$100,000; and

"(b) on each subsequent conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$200,000.

"Directors, officers' liability

"(3) A director or officer of a corporation who caused, authorized, permitted or participated in an offence under this act by the corporation is guilty of an offence and is liable,

"(a) on a first conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$20,000; and

"(b) on each subsequent conviction,

"(i) for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$50,000,

"(ii) to imprisonment for a term of not more than one year, or

"(iii) to both such fine and imprisonment."

**The Chair:** Is there any further debate on the amendment? Seeing none, I'll put the question. All those in favour of the amendment? Carried.

Shall section 4, as amended, carry? Section 4, as amended, is carried.

That leaves us with section 5. Any further comments or amendments to section 5?

**Ms Shelley Martel (Nickel Belt):** Mr Chairman, my colleague is replacing me in the House and I'm replacing him down here. Let me ask this question. He may have gotten to it, and I apologize if he did; I don't think so.

His question was why we would really need section 5, which would actually provide the government with regulation-making power, if the intent of the legislation was



really to make sure that shipmasters adhered to federal guidelines that have been adopted by the Canadian Coast Guard and to make sure that if they docked at a provincially owned dock or at a privately owned dock or wharf in the Great Lakes those guidelines would then apply. My question then would be, if that's all we're doing, why do we need a provision which would allow the Lieutenant Governor—ie, cabinet—to make additional regulation?

**The Chair:** I think he wanted that question posed to Mr Flagal, who had already left the room to do his research on section 4. I don't know if you've caught the gist of the question.

**Mr Flagal:** It's on authority to adopt these water control guidelines. If the Lieutenant Governor in Council is of the opinion that it just wants to adopt, by reference, the guidelines adopted by the federal government, it can. So in answer to your question, I guess a way for them to make those guidelines binding through this piece of legislation—and those are the standards they want to follow—is by adopting. It doesn't say that's something they have to do, but that is one of the things they could do under section 5.

**Ms Martel:** But if you were going to do that, and I was given to understand that was the intent, why wouldn't you then give the Lieutenant Governor the power to do just that and state right in section 5 what guidelines it is you're referring to? So that you shut the door on other regulations that probably have not been discussed here, because I suspect what has been discussed is coast guard regulations, and you make it absolutely clear what you're expecting the government to implement.

**Mr Flagal:** If that's a policy choice, if that is something this committee wishes to do, if they want to adopt through this legislation those guidelines, and that's what needs to be conformed with, then I need to see those guidelines with a title and that section would have to be redrafted to say they have to act in accordance with those guidelines. OK? That's what would have to happen. I haven't seen those guidelines. If those guidelines exist, and I'm sure they do, great. Then instead of giving a regulation-making authority to cabinet, section 5 can just say, "The guidelines shall be X." It may need a restructuring. I'd have to look at the bill again to see whether or not it needs a restructuring. But if that is your intent, as opposed to leaving it to the Lieutenant Governor in Council to adopt the federal guidelines, I'd have to look at the bill. I have not been presented with those guidelines.

1740

**Ms Martel:** Maybe I can ask one other question. I wasn't here for the debate, and I don't know what Mr Ouellette's intentions are or were. Maybe you can just describe if that was the sum total of it, and if that's the case, if we can move to find a way to put that section in so that the government will comply with those guidelines.

**Mr Ouellette:** The intention is to make sure that there's mandatory compliance. However, should the guidelines entirely change, are we able to change anything here to make sure that is a minimal compliance we can stay with? Do you understand?

**Ms Martel:** Yes.

**Mr Ouellette:** The one thing I would commit, in the same fashion that we worked together on the amendment on section 4, is that during the regulation process I would be happy to sit down with the opposing parties and have it on record to work on regulations to ensure that that's what is taking place.

**Mrs Munro:** I guess this question that I'm posing is really more correctly addressed to legislative counsel. Given the discussions that we had this afternoon from those presenters, it seems to me the issue is that the science that would go into any regulation is not yet at a point where there is consensus. We heard considerable discussion about various options. So it would seem to me that what we should be doing is allowing in this part of the bill an opportunity to provide an avenue for what might come to be regarded as the right way to go in terms of this environmental issue. I don't have the sense that there is that consensus at this point.

**The Chair:** Mr Flagal, do you wish to respond to that?

**Mr Flagal:** The regulation-making authority in section 5 is very broad. It simply states, "The Lieutenant Governor in Council may make regulations prescribing ballast water control guidelines." That would mean that whatever practice, as I can see from section 5—if a consensus is ever found or if the province decides that these are the practices it would like to see adopted, then it can prescribe those in the guidelines. Section 5 doesn't prejudice an outcome; it simply provides authority.

**Mrs Munro:** But I think that's really important at this point, given the kinds of things we heard in relation to the discussions that are taking place as to the mechanics, the science, the use of biocides, the use of ultraviolet and so on. I don't think it's the intent of this piece of legislation to lock in. In fact, I think it's supposed to be broad for that reason.

**Mr Levac:** I believe Mrs Munro's observations are correct in that what we've heard are concerns as to which methodology is going to be used, and indeed there could be even new science coming up that helps us solve that problem. However, I do want to point out that I believe what Mr Bisson was getting at was—I believe I heard this and maybe you can correct me if I'm wrong—that the federal statutes would supersede this anyway in terms of jurisdiction. I think if we tied the federal government's concerns into section 5, we would then be addressing whether or not the federal government is introducing those new scientific methodologies, because I'm going to assume that once the process starts, the IMO and the federal governments on both borders are going to be adopting these new sciences. They will be looking at these all along. We were told today that Mr Streeter and the companies are all still working together in trying to



find and use these new sciences that do two things: first of all, address the problem, which is what we're all talking about, and second, don't infringe upon their abilities to perform their industrial jobs without bringing corrosion to their ships and without costing an exorbitant amount of money for those efficiencies.

That being said, I would also like to then say, why not something to the effect of, "The Lieutenant Governor in Council may make regulations prescribing ballast water control guidelines as adopted by the federal jurisdiction for the purpose of this act"? Does that not address what Mr Bisson's saying and also give as much freedom as possible because it shrinks a little bit what Mr Flagal is saying? You're saying it's very broad, and I do read it that way, that anything that comes along, the provincial government can turn around and say, "These are the guidelines for ballast control."

**Mr Flagal:** There's one thing I need to point out about adopting guidelines that you may want to think about, and that is, guidelines are often written in guideline form and may not be binding in the way they're expressed. I'll give you an example. It may use a lot of permissive language: "A master may" or something like that. They're fine for that—I can think about adopting the federal government guidelines—but before you take guidelines and just say, "We're going to adopt them," it's important to study the guidelines and the content of them to make sure that they create duties and that they are enforceable. The reason I say this is that often when you take guidelines and you want to make them into regulation—and you see that done sometimes within the province, that a guideline will often get turned and you say, "We're going to create duties and make people test water," for instance, or something like that. You have to make sure that the regulation imposes those duties.

I simply point that out because I have not seen the guidelines, I cannot tell you what sort of duties those guidelines impose on people, and that is why I think there was an attempt to leave it as section 5 is couched right here, because you may want to take those guidelines and say: "Let's look at them. You want to know something? This is permissive, but we may want to make this mandatory, as a requirement, or clarify the language of what may be."

**Mr Levac:** I can appreciate that explanation. I was just trying to put something out there that would address both of those concerns. It's pretty hard to marry both of them because one says, "No, you have to have complete freedom," and the other one says, "But we want to bring that down a little bit and not give so much regulatory power under that section." I'm just trying to find that ground on which we can do both, because I do understand both sides of that. It's trying to find out what it is that marries that, but I don't think it's going to be. I just brought it out there to discuss, so I'll defer to my colleague across the way.

**Mr Ouellette:** As mentioned by Mr Streeter, they are voluntary guidelines. That's one of the difficulties right now with the federal legislation. That's why there is such

a strong concern, that they are voluntary, which necessarily doesn't mean they have to have compliance. So are we going to draft legislation and bring it forward where we don't really need compliance?

**The Chair:** Ms Martel, I'll offer it to you because, to be fair, you weren't here for the earlier presentations. The members of the committee received a packet that does outline the guidelines. I would think, just from a legal viewpoint, that the wording would have to be changed. So I don't know what you're suggesting when you say just adopting them captures that reality. In other words, as they are currently written, by using words like "voluntary" they would be inconsistent with the other sections of the act we've already passed, because this is not a voluntary procedure we're dealing with here.

**Ms Martel:** My only question then would be, why in the preamble does it say, "If ocean-going ships adhere to appropriate guidelines, such as"—and we list the Canadian Coast Guard ones—"it should reduce the probability of additional non-native species being introduced." I read that and I assume someone has looked at and assumed the guidelines are going to do something positive. If that's not the case, if they're only voluntary and we have some concerns about how stringent they really are, then I think your preamble is just a little bit misleading. All I'm trying to get at is, if the focus was to use at least these guidelines as a starting point, then why can't we find a way to say that? If you've got this concern that the guidelines aren't that great, then you've got a problem with the preamble that basically says, "If you follow these, we're going to reduce some of this stuff." I just see a contradiction there. I'm sorry that I missed the debate, but I just see a real contradiction there.

**Mr Ouellette:** The explanatory note is for the guidelines for this bill, not the federal ones, so it doesn't specifically say the federal guidelines here; it just says "water control guidelines prescribed by regulations," which is enacted through section 5.

**Ms Martel:** But if I look at your preamble—

**Mr Ouellette:** Not the explanatory note?

**Ms Martel:** The preamble is very clear, right? Your preamble says, "Great Lakes Ballast Water Control Guidelines of the Canadian Coast Guard." Maybe I'm assuming incorrectly that—

**Mr Ouellette:** I thought you were referring to the explanatory note.

**Ms Martel:** I'm looking at the preamble.

1750

**Mr Ouellette:** Obviously it's legislative counsel who drafted the preamble for this, the "such as the Great Lakes Ballast Water Control Guidelines."

**Mrs Munro:** "Such as" is not an exclusive list. It's like, "for example," and I think that's the whole rationale behind section 5.

**Mr Levac:** Which makes me come back to the comment that I made then. I'm not necessarily challenging you, but if "The Lieutenant Governor in Council may make regulations prescribing ballast water control



guidelines for the purpose of this act," the fact that we are taking a look at that particular federal guideline doesn't necessarily mean that the regulations have to actually adhere to that. It means that you may make regulation. It's got these guidelines in. As you said, they're voluntary and they're guidelines, but what would prevent that? Is it just narrowing the spectrum, that it says you only speak to the federal guidelines?

**Mr Flagal:** The problem is the use of the word "guidelines." "Guidelines" does usually imply voluntariness but guidelines may be enforceable if they're adopted by regulation and therefore have the force of law. The perfect example is that prior to the Canadian Environmental Assessment Act, there was the environmental assessment review process, which was a guideline. Then a court said: "Hey, it's a guideline, but it actually has been adopted in a mandatory way by order in council by cabinet. It's compulsory." So it can be made compulsory. You can adopt the federal guideline by the regulation. If the Lieutenant Governor in Council wanted to do something more—it's an open regulation-making power—it could.

**Mr Levac:** Which is why I'm saying, why couldn't you add that then and just know that's their power, that they have that power?

**Mr Flagal:** To adopt?

**Mr Levac:** To adopt other regulations.

**Mr Flagal:** To adopt other regulation? That's what I'm saying. "The Lieutenant Governor in Council may make regulations prescribing ... water control guidelines for the purpose of this act." Water control guidelines means the guidelines prescribed by regulation. You get in this wonderful circle and when the circle ends, the standards are in the regulation. They're just like any other standards. These ones happen to be called "guidelines." They could be the federal guidelines. Let's say you like a part of the Michigan guidelines, that you find that quite attractive, a component that you wanted to include. You can incorporate some of the Michigan elements. I mean, it's wide open.

**Mr Levac:** I understand that completely and I think what I was just trying to do in entering the debate was to try to rest assured Mr Bisson's comments about having other regulatory power beyond what's being established by these bodies. I think he sees it as a way more open-ended legislative power that he was bringing up as a concern. All I was trying to do was to find out whether or not there was a way to include the discussion and narrow it. It doesn't sound like that's happening, so I'll leave it at that for myself.

**The Chair:** Any further comments?

**Ms Martel:** I'll just close by saying this: It seems to me that if it was important enough for the guidelines to be specifically named in the preamble as a mechanism by which, if implemented, they could reduce non-native species from being introduced, then the least you would want to do in the regulation section is ensure that as a minimum those same guidelines are ones that have to be adopted by cabinet. That's my only point. For whatever

reason, legislative counsel had them included, named specifically, in the preamble as a measure that would reduce this problem. My suggestion would only be to find some way to make sure that, as a minimum, they are the least that cabinet has to do. Right now, as I read section 5, cabinet wouldn't even have to adopt them. Correct?

**Mr Flagal:** No, they're not—

**Ms Martel:** So why bother referring to them specifically then in the preamble? But hey, I didn't come down here to cause problems today; I'm just saying I think it would strengthen your preamble if they were included in some way there.

**The Chair:** Any further comments? Seeing none, I'll put the question. Shall section 5 carry? Section 5 is carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

That finishes off our considerations of Bill 15. Thank you, everyone.

## COMMITTEE BUSINESS

**The Chair:** Now we get to the last little bit of house-keeping, Mr Barrett's bill. After the standing order 124, we had agreed we're moving through our private members' bills in sequence. Mr Barrett's bill would be next. I believe you had a request for us?

**Mr Barrett:** Just to get some advice and perhaps a decision from this committee. Bill 13, the Ontario Marine Heritage Act, also known as the shipwreck bill, is before this committee. Over the winter I received maybe 170 e-mails on it. I've written letters to well over 200 dive clubs and individuals. I feel it's very important to have a bit of consultation on this bill. Given the interest out there in the community, from all the Great Lakes, I thought it was important that it not just go through this committee and, if I can use the phrase, be rubber-stamped.

I would like to request advice from this committee or a decision that we could advertise and receive deputations on this bill. I'm suggesting on into the summer, if the committee was agreeable to this, to visit a Lake Ontario port. I know Mr Gerretsen has had a lot of feedback down in the Kingston way; Owen Sound is a federal dive site. Many of those sites have been stripped, unfortunately. There's a lot of interest at my own lake, Lake Erie. So I'm suggesting we visit a couple of ports in late summer. I would ask the committee to perhaps make a ruling on that.

**The Chair:** I think what would be appropriate for the committee, because we are not normally empowered to meet when the House is not meeting, is to request the House leaders to consider a motion that would allow the committee to meet for up to three days of hearings during the intersession for the purpose of holding public hearings on Bill 13. Then the subcommittee can deal with the substance.

Mr Levac and I were speaking earlier, and based on the responses you get to an advertisement on the parliamentary channel and on the Internet, we could then determine the whys and wherefores. But at this stage, I think the question to be posed is whether we are interested in asking the House leaders to consider acceding to such a motion.

**Mr Levac:** I would move that we send that request to the House leaders.

**Ms Martel:** I agree.

**The Chair:** I don't see any heads in opposition, so all those in favour of Mr Levac's motion that we seek that approval from the House leaders? Contrary, if any? The motion is carried. The clerk will please send a letter to that effect to the House leaders with all great haste.

The timing was perfect. Seeing as it's 6 o'clock, the committee stands recessed until 3:30 this Wednesday.

*The committee adjourned at 1758.*





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#### Substitutions / Membres remplaçants

Mr Gilles Bisson (Timmins-James Bay / Timmins-Baie James ND)  
Mr Jerry J. Ouellette (Oshawa PC)

#### Also taking part / Autres participants et participantes

Ms Shelley Martel (Nickel Belt ND)

#### Clerk / Greffier

Mr Viktor Kaczkowski

#### Staff /Personnel

Mr Jerry Richmond, research officer, Legislative Research Service  
Mr James Flagal, legislative counsel





## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Wednesday 21 June 2000

# Journal des débats (Hansard)

Mercredi 21 juin 2000

**Standing committee on  
general government**

Subcommittee report

Professional foresters legislation

**Comité permanent des  
affaires gouvernementales**

Rapport du sous-comité

Projet de loi sur les forestiers  
professionnels

Chair: Steve Gilchrist  
Clerk: Viktor Kaczkowski

Président : Steve Gilchrist  
Greffier : Viktor Kaczkowski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 21 June 2000

Mercredi 21 juin 2000

*The committee met at 1542 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the standing committee on general government to order for the purpose of considering standing order 124 resolution: proposed legislation entitled An Act respecting the regulation of the practice of Professional Foresters, Mr Chudleigh.

Our first order of business is the report of the subcommittee.

**Mr Garfield Dunlop (Simcoe North):** I will read the report.

Your subcommittee met to consider the method of proceeding on Mr Chudleigh's proposal, pursuant to standing order 124, to consider draft legislation entitled An Act respecting the regulation of the practice of Professional Foresters, and has agreed to recommend:

(1) That the committee meet on Wednesday, June 21, 2000, to consider Mr Chudleigh's proposed legislation.

(2) That notice of the hearing be placed on the Ontario parliamentary channel and on the committee's Internet Web page.

(3) That the deadline for the receipt of requests for those wishing to make an oral presentation be 5 pm on Tuesday, June 20, 2000.

(4) That time allocated to those making oral presentations be set at 15 minutes for groups and 10 minutes for individuals.

(5) If there are more witnesses requesting to appear than can be scheduled in one day, the committee will continue its consideration of the matter before it at its next regularly scheduled meeting.

(6) That the Chair and clerk of the committee be authorized to schedule witnesses and to make whatever logistical arrangements that are necessary to facilitate the committee's proceedings.

**The Chair:** Can I assume you move adoption of the report?

**Mr Dunlop:** I move adoption of that.

**The Chair:** Any further comment? Seeing none, I'll put the question. All those in favour of the subcommittee report being accepted? It's adopted.

PROFESSIONAL FORESTERS  
LEGISLATION

Consideration of the designated matter pursuant to standing order 124 relating to Mr Chudleigh's proposed legislation entitled "An Act respecting the regulation of the practice of professional foresters."

**The Chair:** Mr Chudleigh, do you wish to make a brief comment before we entertain a deputation?

**Mr Ted Chudleigh (Halton):** Yes, thank you, Mr Chairman. I'll be very brief. Committee members remind me that briefness is good.

First of all, I'd like to say that this bill was brought forward in our last term, I think it was the 36th Parliament, by Mr Ramsay. Just before the House prorogued it ran into a few technical problems and there wasn't time to redraft it. Much of the background work has been done by Mr Ramsay, and I think the bill, under standing order 124, will go forward in the names of the committee, as opposed to an individual name. Is that correct?

**The Chair:** Actually the Chair has to sign it and all other members of the committee who wish to sign can sign as co-sponsors.

**Mr Chudleigh:** So it won't attract only a single name and although we have moved it forward in these past few weeks—I guess entering into months now—certainly David Ramsay deserves full credit for his work in initiating this bill in the last Parliament.

The history of the Ontario foresters has been long and revered in Ontario. It goes back to the Foresters Act of 1957 and I think there was probably one before that as well. It's a proud tradition in Ontario, that of the foresters.

I've had the opportunity, as parliamentary assistant to natural resources, to tour a number of our forests. I was particularly struck with the Madawaska highlands, in visiting that area, and the quality of the forest. Sixty to 80 years of management has produced a truly magnificent forest, one that we can be proud of from anywhere in the world. I think you only have to compare with other parts of the world, for instance, Russia, where forest management is not particularly prevalent.

Now, with the Ontario Living Legacy announced by the Premier in March 1999, they have an assured use for the forests. Along with the Ontario Forest Accord, it is certainly time that the Professional Foresters Act, 2000,

was considered by this Parliament and that we proceed to ensure that tradition of forestry is kept up to date and that the foresters who are signing plans for forests and woodlot management are every bit as capable and as credited as the high standards that Ontario foresters demand.

#### TEMBEC INC

**The Chair:** That takes us to our first presenter, from Tembec Inc, Mr George Bruemmer.

**Mr Chudleigh:** Mr Chair, Mr Ramsay may want to make a comment when he arrives, so you may give him that opportunity.

**The Chair:** I'd be pleased to do that.

Good afternoon and welcome to the committee.

**Mr George Bruemmer:** Thank you for having me. It's a pleasure to be here today. It's been a long road for the OPFA to bring this bill to this point and it's certainly a privilege to be part of the process to get it through.

I've been a registered professional forester in Ontario for 18 years and a member of the OPFA throughout that time, four of those years on the executive of council of the OPFA in the mid-1990s when the association decided to go forward with this licensing initiative.

I have spent my career working both in the forest industry and in the provincial government, all in Ontario and I've practised forestry. I graduated from Lakehead University in 1982, spent several years in Thunder Bay, five years in Chapleau, four years in Cochrane and the past six years in the Mattawa area. I've worked in many parts of the province, from one end of it to the other, and I've been part of the association for all that time.

Currently, I'm the research and development manager for forestry for Tembec corporately, based in Mattawa. I enjoy the biological, social and economic complexity of forestry in Ontario, and I like trees. I have to say I'm extremely proud of the effort, the perseverance and the determination the association has put into this effort to this point in time. I think the reason for that is that this bill is good both for the forests of Ontario and for the people whose quality of life benefits from those forests. I think that takes just about everybody here certainly and everybody in the province into that equation.

I'm sure by now I've already blown any hope you may have had of hearing an objective presentation on this particular subject, but I hasten to add that I'm not here purely to share my own personal views on the subject of licensing. I'm here to speak on behalf of Tembec.

To do that, and to keep myself honest, I'd like to read some excerpts to you from a presentation that was made to this committee about a year and a half ago by Jim Lopez who is now the vice-president for forest resource management for Tembec and my immediate supervisor. Jim is not a forester and has no particular allegiance to the OPFA, but I think for reasons of personal conviction as well as corporate interest, he has a strong interest in good forestry in Ontario and would have been here to say so himself if he could have, but got tangled up in

scheduling conflicts that he couldn't change. I'll read excerpts from what he spoke to the committee about in December 1998:.

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"A little bit about the background of Tembec. I'm here representing a member of the industry, not necessarily the whole industry. Tembec operates 10 mills within Ontario with over 2,500 employees in the province." That number keeps growing. "The company operates a total of"—about 23 mills, I think, at last count—"throughout Canada and has 6,000 employees in the country. The company is currently one of the largest operators on public land throughout eastern Canada." We have operations stretching from BC and Manitoba, Ontario, Quebec and in New Brunswick as well.

"Our company has been recognized recently by a number of environmental groups as one of the leading forest managers in the province, and we've been recognized in some publications as such ... Tembec has been one of the first forest companies within Canada to receive Forest Stewardship Council certification ... for our forest management practices on private land in Ontario. We're quite proud of what we've accomplished, and we're interested in any legislation that's going to continue to advance sustainable forestry throughout Ontario.

"I'd like to make several key points. One is we believe Ontario has one of the most progressive pieces of forest management legislation in the world in the Crown Forest Sustainability Act, a piece of legislation that we believe is second to none in Canada and maybe throughout the entire world ... we think Ontario should be proud of it and boast this legislation, because it bodes well for the future of forest management on public land in the province.

"We believe also there is a community of foresters in Ontario who are very professional and highly committed to the sustainability of the forests in this province. It's exciting. It's interesting to see the passion that our foresters have for managing the forests while still contributing to positive growth in the forest industry and employment in the forest industry in this province." I'd like to think that he's speaking about me personally when he says that, but I haven't got him to acknowledge that yet to this point in time.

"The licensing of professional foresters is about establishing some standards for foresters, because these people are on the front line of forest management in this province. Therefore, we think a set of standards should be held up to these people if they are to manage our resources for the future. We believe licensing professional foresters is also another important step"—if not a critical step—"in establishing the credibility of Ontario in the critical eye of the world community toward forest management.

"There's increasing public awareness in Ontario, Canada and indeed throughout the world for forest management practices, and there's now increasing accountability on governments and companies to practise sustainable forest management. Companies are increasingly aware"—as we are—"of potential boycotts of our



products, potential bad publicity, bad advertising ... throughout our marketplace, threatening the very viability of our operations. So we think it is the time for foresters, companies and indeed the government to become more proactive in ensuring that we hold high standards for forest management practices in our province and that indeed we're proud of them and we put those standards forward for the world to see.

"Many of the forest management activities over the last several years have now been transferred to sustainable forest licences ... and forest product companies"—like Tembec.

"This means we're responsible for planning"—for the harvesting, for the renewal—and for the public consultation—that goes into forestry activities on crown land.

"There are a number of other activities that used to be carried out by the Ministry of Natural Resources in the past. If we're going to have this happen, we have to make sure that we have professionals carrying out these activities on the front line."

"We believe this act would be a measure to help narrow the gap between crown land and private land forest management over the long term. This may be a somewhat controversial statement, but we believe there is a large gap between the management of private land as opposed to crown land. There is no standard for private land management right now in terms of forestry practices. While we are not encouraging the government to legislate this, we are encouraging the government to make sure that there are professional, licensed foresters out there who are available for people who have private woodlots who want to practise forest management on these private woodlots. We think making these professionals available to those individuals would go a long way"—towards improving the standards of practice on private land.

"I'd like to point out that licensing is not a threat to our company. We do not feel that this is going to impede our ability in any way to carry out our business in Ontario."

That concluded Jim's comments to the committee a year ago.

Again, without trying to put too much of a personal bias on closing statements, what will licensing do for foresters in Ontario? I think, first of all, it will ensure that foresters who claim to know what they are doing, in fact do. So when companies like Tembec or government or private landowners hire registered professional foresters, they know that they're paying for high standards of professionalism and professional integrity.

Second, licensing will help these foresters to stay on the leading edge of their competency; in fact, it will require them to do so.

Third and finally—and we hope rarely—licensing will provide meaningful recourse against malpractices by foresters who claim to be professionals when, in fact, they are not.

This is very good legislation for the forests of Ontario and, by extension, for the people of Ontario. I think it's very fair as well for those of us who live and work in forestry in Ontario, whether we're foresters or whether we're not. I hope you'll make it law.

**The Chair:** Thank you, Mr Bruemmer. Maybe I should say, just before we start the round of questioning, that this is a somewhat unique process we're going through. I think we've only had two bills previously under standing order 124. Perhaps, if you have any suggestions to offer to the specific wording of the draft bill, if you've had a chance to read it, you and the other presenters, that would be very useful to us, because in theory right now we're preparing the bill for the first time to send into the House. We're not debating a bill that's had first reading. We'll be getting that subsequent to these hearings. So we have a very different ability to make changes at an early stage. If there's anything you've read that you'd like to see changed, I hope you'll take that opportunity, if not now then soon, to share with us.

With that, we'll start the round of questions. We have a couple of minutes for each caucus.

**Mr David Ramsay (Timiskaming-Cochrane):** I'm just very pleased that you're here to support the bill. As you know, I consider this a very important area of professionalism in this province, representing a northern area that's very dependent upon the forest industry. Your company has a presence in my new extended riding now, Timiskaming-Cochrane, and you're right. Your company has a very good reputation within the industry and within the community, especially in tackling some of the challenges that forestry companies have had as of late and not just dealing directly with the management of trees. I very much applaud that you're here to support this, because I think the industry as a whole will be better for this bill. I think it's about time that we recognized the professional work that our foresters do. I thank you.

**Mr Bruemmer:** Thank you on both counts.

**Mr Howard Hampton (Kenora-Rainy River):** Is it OK if we start asking questions? You have no problem there? You don't mind if we actually get right down to the nuts and bolts?

**The Chair:** Please do.

**Mr Hampton:** One of the issues that I've often heard raised in the past by people who work for the Ministry of Natural Resources was that there wasn't sufficient government commitment to forest management and forest renewal and the forest ecosystem. Many of those people were foresters. They would come and they would say, "We are underfunding forest renewal, forest management and the forest ecosystem by \$200 million a year," or \$300 million a year or \$400 million a year, yet when push came to shove, they would sign on the dotted line.

Now that most of the forest management is operated by private, profit-making companies, how is this bill going to protect a forester who works for—gee, in my hometown—Abitibi Consolidated and who is concerned that the company is not doing the job that should be done in terms of forest renewal or forest management or the



forest ecosystem generally? If he or she doesn't want to put their name on the dotted line, does this bill provide any protection to them?

**Mr Bruemmer:** I think it does. I indicated earlier that I've worked both in the provincial government and in the forest industry. I've always resented the label of "company forester" or "government forester" or "consulting forester."

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I think what this bill will provide is a title of "professional forester" that will apply to all of us. That distinction, where the OPFA has been around for a long time, didn't necessarily have the teeth, on the one hand, to discipline members who are signing, perhaps despite their best professional instincts, things that they don't feel they should sign, and, on the other hand, it's not protecting them either. I think if we're licensed as professionals in Ontario and if there is occasion—and we hope that doesn't happen—where a professional forester feels that something he or she is being asked to do by his or her employer is not correct or is not professional and it doesn't meet the standards of the association, then that individual has the association to fall back on for support in either making the individual's point, reassuring that individual that whatever is being proposed is OK, or supporting that individual in making changes to whatever is being proposed in whatever they're being asked to sign.

**Mr Hampton:** Could I ask a supplementary?

**The Chair:** Very briefly.

**Mr Hampton:** Someone's name is Bob Jones and they don't feel that in a given forest area either adequate funding is being put to work or adequate strategies are being employed, so he refuses to sign an annual work schedule or refuses to sign off on a particular piece of work that has to be run by the Ministry of Natural Resources. The company then disciplines that person. They fire him or they demote him. How would this bill help that person who is trying to observe professional standards?

**Mr Bruemmer:** I assume if that did occur the individual would have an appeal. I try to put myself personally in that type of situation. I would go to the OPFA and say: "I'm doing what I think is right. Can you please assemble a group of other professionals to either reassure me that what I am doing is not right and I should sign the thing and get on with it or that what I am doing is right and then support me in taking recourse, if necessary, against whatever I've been asked to do that I don't agree with doing."

If somebody has been demoted or fired—I don't know of any major companies, certainly not Tembec, that would resort to that. I've never heard of it happening. But if it did, I think a profession that is licensed has more weight in adjudicating disputes like that between individuals and their employers, and that's something that I don't think we've had here before.

**Mr Dunlop:** I'd like to comment on the fact that I'm happy to see Tembec at the table here today making

comments. I come from the county of Simcoe and we have one of the largest regional areas of forestry in southern Ontario. I think it's 30,000 acres. I know Tembec bids a lot on the timber from that area. I think the Ministry of Natural Resources originally managed it for the county of Simcoe, and I believe the county has looked after it from January 1995 on their own.

I just want to make one quick question to you. It's something that I often hear and I'm wondering how foresters would react to this, that is, the damage that is done by the equipment taking out logs. I often hear that as a comment from people who did it on private lands as well as these county lands. It was something that we had to look very carefully at. I wondered if you could comment on that at all.

**Mr Bruemmer:** I guess I would use a personal example. I own 30 acres in Mattawa which I bought when I moved there. I'm not familiar with Simcoe county per se so I can't speak to that. The 30 acres that I own had clearly been logged in the past, either once, or probably twice, and had clearly been logged solely for the purpose of product and product value. It wasn't clear-cut. Perhaps visually it didn't look that bad to an untrained eye, but it had not been managed in the sense of other considerations being taken into account when the cut was planned. The visual impact is always there initially—it passes very quickly—but if the proper planning has gone on and if the proper practices have been applied right through the piece, then I think the negative visual impact is fairly short-lived and the recovery from that impact is very quick.

It's hard to ever convince anybody that cutting trees is visually a good thing. But if you take those same people back there—and that's really how I got into the business, with a very negative perception of what forestry or cutting was—and then you go through there in a sequence, from one year, five years, 10 years and so on, if it's done well, ultimately it looks better and the forest does well for it.

I take my kids on my little 30 acres and plant trees every year and try to reclaim it. I don't know whether the landowner was interested in having foresters help him or not. If he didn't have the opportunity, he does now. I regret that he hadn't taken the care at the time. I hope that in Simcoe at least—and I know with the activities we've had there, it's been a precondition that it be planned properly and executed properly or we're not going in there.

**The Chair:** Thank you very much for coming before us, Mr Bruemmer.

#### WORLD WILDLIFE FUND FEDERATION OF ONTARIO NATURALISTS

**The Chair:** Our next presentation will be from the World Wildlife Fund, Mr John McCutcheon. Good afternoon and welcome to the committee. We have 15 minutes for your presentation.



**Mr John McCutcheon:** I'd like to thank the committee for giving me permission to speak to you today on behalf of our support of the licensing of the profession of foresters. My name is John McCutcheon. I'm a director and a member of the executive committee of the World Wildlife Fund of Canada and a board member of the Living Legacy trust. I've been asked by Ric Symmes of the Federation of Ontario Naturalists to speak to you in support of this program and I wondered if I could read a letter that I just received from him.

**The Chair:** Please do.

**Mr McCutcheon:** "Dear John:

"Thank you for the opportunity to review the proposal by the Ontario Professional Foresters Association, and your remarks concerning the licensing of foresters in Ontario. The Federation of Ontario Naturalists has a longstanding interest in the health of Ontario's forests both north and south. We believe that the licensing of foresters will be beneficial to this interest. Please convey this support to the committee as part of your presentation.

"Founded in 1931, the Federation of Ontario Naturalists (FON) is dedicated to the protection and conservation of wildlife and nature in Ontario. We have 15,000 members and 104 local member groups in Ontario. Over that 70-year period, we have participated in key events and decisions that affect forests and all the biodiversity they support. We were an instigator of the Guelph conference of 1941 that triggered decisive action to restore forests and control erosion in the Ganaraska, Norfolk county and creation of the conservation authority system. More recently we spent years contributing to the timber environmental assessment hearings. Along with World Wildlife Fund and Wildlands League, we played an important role in Lands for Life, leading to the historic Ontario Forest Accord in 1999.

"We believe that it is important that persons giving advice on forest management have adequate qualifications, including a broad understanding of what makes a healthy forest ecosystem and that practitioners keep up to date. They also need to have professional standards and an association to stand behind them when they are asked to approve measures that compromise those standards. For this reason, FON supports the licensing proposal, and asks that the committee do the same."

That's from Ric Symmes, the executive director of FON.

The World Wildlife Fund is an international organization with offices in 70 countries, head office in Gland, Switzerland, and over six million members worldwide—a very large organization. We have 50,000 members in Canada.

I brought along an annual report for you to look at when you get a chance, both for the World Wildlife Fund and for FON. That will give you the background of where we are and the interest that we have certainly in forest.

Directors in the activities of the World Wildlife Fund in Canada as a worldwide organization have a mandate to support sustainable forest use, and we are founders of the

forest stewardship accord. Again, there's a pamphlet for your information that looks like this. The information in this pamphlet describes the aims and objectives of FSC.

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Licensing will give added credibility to the certification process which helps the forest industry to compete with marketing green products. I think that's a very important part of where we feel we are supporting this program.

WWF fully supports the professional foresters bill, which would create licensing legislation for Ontario professional foresters. WWF has a working relationship with forestry companies and professional foresters in a number of countries and provinces. We feel that a licensed body of foresters would bring a better balance in the use of Ontario forests. Environmental issues concerning the need to respect wilderness and wildlife are defined in the association's terms of reference.

Under the present conditions, foresters working for forestry companies can come under pressure to react to shareholders' demands and the direction of management. Foresters employed by the ministry are subject of course to changing political priorities. Due to government restructuring in Ontario, there is a reduced ability to monitor forestry practices and the need for an independent, accountable body. If foresters were licensed and subject to the rules and regulations of the professional foresters association, they would have the support of their own association for taking an unpopular stand, just as George commented a minute ago.

This would be similar to the rules for accountants', lawyers' and doctors' associations, which set standards and maintain professional conduct by their members. We see very little negative aspect in licensing professional foresters. There does not appear to be any additional costs to the government or the public. There's a strong probability too that young people considering a course in forestry would be encouraged if it meant they would be a member of a certified body.

Industry, on the other hand, is under pressure to reduce costs with highly mechanized equipment that can very quickly do severe damage to the ecosystems in which they are working. Woodlot owners in southern Ontario must have access to foresters who are governed by the rules of their profession, who they have confidence will give them the best advice in managing their woodlots, advice that would include specifications for best conservation practices. Again, there's a book that's just been produced by FON which you would find very interesting on that subject.

WWF is a voice for the rapidly growing segment of Ontario's population who are concerned about our public lands, our forests and waterways, and who feel it is essential to have an independent licensed body which is dedicated to forestry practices that will sustain our vast forest areas and the flora and fauna situated therein for generations to come. WWF has made significant strides in developing a good working relationship between conservationists and the forest industry through joint



membership of the Ontario Forest Accord Advisory Board in settling unresolved issues emanating from the Lands for Life process.

The Living Legacy trust, of which I'm a member, with representatives from forestry and the environmental community, is providing money in support of responsible intensive forestry, value-added forestry, increasing employment and fish and wildlife research. Both of these initiatives have resulted in greatly reduced confrontation in the north and increased productivity. Would we feel comfortable with unlicensed doctors or accountants? I really don't think we would. The same applies to foresters, with the responsibility and the accountability that is the basis of this bill. Thank you.

**The Chair:** We have two minutes per caucus for questioning. This time we'll start with Mr Hampton.

**Mr Hampton:** Do you agree with me that there is much more to forestry than simply industrial forestry, simply the harvesting of trees for industrial purposes?

**Mr McCutcheon:** Yes, I do.

**Mr Hampton:** Would you agree with me that the forest is also very important for environmental reasons, and, let us say, for First Nations people, it is important for cultural, historical and traditional reasons, as well as being a home?

**Mr McCutcheon:** Yes.

**Mr Hampton:** Does it trouble you that, as I read this legislation, it reads almost as if forestry were exclusively an industrial undertaking?

**Mr McCutcheon:** In looking at the objectives which we have, we find that sustainability is mentioned many times.

**Mr Hampton:** But sustainability can be defined narrowly or broadly. Let me give you an example. Right now in this province there are four protests going on by First Nations against industrial forest companies. One is in my constituency. It involves the people of Grassy Narrows who are confronting Abitibi Consolidated. Two more are happening north of Timmins where two other First Nations are confronting, odd as it may seem, Abitibi Consolidated. Their complaint is that the foresters for that company and MNR simply regard the forest as an industrial resource. They fail to take into account the cultural, traditional and other environmental aspects that affect those aboriginal people who are very much still land-based. I don't see anything in this legislation that refers to that broader scope of sustainability. Does that trouble you?

**Mr McCutcheon:** No, I don't think so. In speaking to the people who we have been in contact with as far as the foresters—and we're working very closely with them on the Ontario forest board—we find that as far as sustainability and what it means to them, it is very much in keeping with what our feelings are about the subject.

**Mr Hampton:** The scope of practice, section 3(1), "The practice of professional forestry is the provision of services in relation to the development and management of forests," doesn't say anything about conservation of forests. It doesn't say anything about the long-term

sustainability of forests. It says, "the development and management." That seems to me a pretty narrow definition of what forestry is about.

**Mr McCutcheon:** Development today, if you're looking at sustainable development for the future, you have to take into account all of the various aspects that you've just mentioned.

**Mr Hampton:** If I read further, it says:

"and includes

"(a) the designing, specifying or approving of silvicultural prescriptions and treatments, including timber harvesting." That's mainly silviculture and the treatments necessary for silviculture and harvesting. Then it says:

"(b) the appraisal, evaluation and certification of forests ..." It doesn't say anything about sustainability; it doesn't say anything about the broader concept of sustainability.

"(c) the auditing of forest management practices;

"(d) the assessment of impacts from planned activities on forests and urban forests." Again it doesn't say anything about that broader concept of sustainability.

"(e) the classification, inventory and mapping of forests ...

"(f) the planning and locating of forest transportation systems ..."

None of those things mention the word "sustainability." None of them mention the broader aspects of the forest environment. Wouldn't you find that a bit troubling?

**Mr McCutcheon:** Certification is something that is being promoted not only by our organization but others as well. That certainly brings into play the whole aspect of sustainability.

**Mr Chudleigh:** I'd bring to your attention the Crown Forest Sustainability Act, which in conjunction with this and the standards that the professional foresters association will set, will answer many of those concerns, to ensure that the forest is managed in the total aspect of the forest range as opposed to the prime use and enjoyment of a harvesting company.

I think the broadness of that is sustained by your presence here, Mr McCutcheon, and that of the Federation of Ontario Naturalists and the World Wildlife Fund, in your support for the bill. I don't think it's all that usual that foresters and these two organizations sit down together. It pleases me greatly that we've been able to come up with a piece of legislation that finds that kind of support. I appreciate very much your presence here today.

**Mrs Marie Bountrogianni (Hamilton Mountain):** I see this act as basically to increase the accountability of the profession, thereby the implication being increasing the probability of sustainability and so forth. Is there anything in this bill that you would like changed, amended, added or deleted?

**Mr McCutcheon:** I would ask for your indulgence, in that I don't have all the details. Mr Hampton is pretty right in some of the things he said that I couldn't answer as well as I would. We—both organizations—would like



very much to be a part of being able to contribute to maybe defining things better as far as conservation is concerned, if that would be helpful.

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**Mrs Bountrogianni:** I look to the Chair.

**The Chair:** In what way?

**Mrs Bountrogianni:** I look to the Chair as far as process.

**The Chair:** We would certainly welcome the input. Of course the bill will then have to go through second reading debate and we'd have an opportunity to discuss it again there.

If your answer meant that there might be some amendments you wish to offer to this bill—I think you were alluding to a more broader involvement in the whole issue of sustainable forest, but I don't want to presume. Perhaps you could clarify whether you thought you might actually have some amendments to offer to this bill and the certification of foresters.

**Mr McCutcheon:** Talking on behalf of WWF and FON, and likely Wildlands League as well, the people there are much better informed on how they would deal with the specifics of clarifying the bill. We would certainly want to make sure that the conservation aspect of it was pretty clearly defined.

**The Chair:** Thank you very much for coming before us today. We appreciate your perspective.

#### ONTARIO PROFESSIONAL FORESTERS ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Professional Foresters Association, Ms Riet Verheggen.

**Ms Riet Verheggen:** Thank you very much, Mr Chairman, and good afternoon, ladies and gentlemen. My name is Riet Verheggen and I'm a registered professional forester. I'm here in my role as president of the Ontario Professional Foresters Association.

I believe that the question that needs to be answered today is, why do we need this new legislation, the Professional Foresters Act, which will govern the practice of the professional forester in Ontario? I believe this legislation is critical to the long-term sustainability of Ontario's forests. Ontario's forested area is equal to the land masses of Germany, Italy, Switzerland and the Netherlands combined. Yet existing legislation in Ontario does not impose academic or professional standards on anyone practising forestry. This lack of legislation and gap in accountability can lead to unsustainable forest management practices.

Ontario needs a strong self-governing professional forestry association to support government and private sector actions pertaining to sustainability, to ensure that the highest standards of practice and forest science are adhered to and to strengthen the accountability of professional foresters.

Increasing public demands on the use of the forests and its sustainability require proper application of

silvicultural guidelines and implementing the highest standards of practice, using the best available science. The passage of this bill will help to ensure that the public interest is protected and that the sustainability of Ontario's forests is improved. The bill will hold professional practitioners publicly accountable for their actions and their forest prescriptions.

The role of the forester is very important to the management of Ontario's forestland. In 1994, as most know, the class environmental assessment for timber management on crown lands in Ontario decision was made. The decision included 115 legally binding terms and conditions that the Ministry of Natural Resources was directed to implement. The board in their decision recommended, throughout the decision, the strengthening of a forester's involvement in the management of Ontario's forests. Specifically, term and condition 2 and 3 direct that timber management plans be prepared in an open and consultative manner by a registered professional forester, who should be the plan author, entrenching the RPF status as plan author. In 1995, as Mr Chudleigh already mentioned, the Crown Forest Sustainability Act further entrenched the status of the RPF, enshrining in the legislation the requirement that all timber management plans be signed by RPFs.

The Professional Foresters Act will also enhance Ontario's international competitiveness by ensuring the province's continued excellence in forestry practices. The use of licensed professionals in certification and other forest management actions will increase and enhance the credibility of Ontario's forest management activities and better position the forest industry in world markets.

This legislation will also change the Ontario Professional Foresters Association from a voluntary organization to a self-regulated professional body responsible for all licensing of professional foresters in Ontario. The OPFA will only then be able to ensure that qualified professionals are practising forestry and that they meet rigid academic and professional standards.

With reference to consultation, the association has consulted extensively over the last four years. First, the OPFA carried out extensive consultation with the membership itself in 1996-97, resulting in an 81% vote in favour of licensing. The members have followed and continue to follow the progress of the association relative to this initiative and continue to support the governing counsel in its efforts to achieve the licensing initiative and objective.

In addition to this, over 90 external organizations have been contacted with respect to this licensing initiative and not one organization has come forward as being against the proposal. Key issues were identified and addressed. They include:

The bill should focus on public interest not personal gratification of the association or its members.

The bill should be sensitive to others who might be affected by the scope of practice and that there is a need for grandparenting provisions and special permits.

The bill should ensure to keep bureaucracy to a minimum.



Mr Chudleigh and Mr Ramsay both spoke to those points this afternoon.

Also, extensive consultations with provincial government ministries over the past year have resulted in additional restructuring of the bill to make it less bureaucratic and easier to administer.

Finally, a recent yet unpublished survey of Ontario landowners indicates that in excess of 80% of the respondents support the need for licensed or certified land management professionals.

The OPFA will be the association to implement the bill. As you may have noted, the most significant powers of the association include the power to license professional foresters in Ontario, to oversee adherence to professional standards of practice and the code of ethics, and to respond to complaints against members through the application of a public complaints and discipline process.

The Minister of Natural Resources, however, has significant power over the activities of the association and its regulations and can require the association to do things as the minister deems are required.

Further to Mr Hampton's question, it is important to note that the Crown Forest Sustainability Act is pre-eminent legislation and in cases of overlap the CFSA will take precedence.

Through this legislation, Ontario will reinforce its position of one as a leader internationally in our sustainable forest management practices. This legislation will ensure that silvicultural standards and guidelines are properly applied on crown lands.

Any professional forester practising in Ontario will have to become a member of the Ontario Professional Foresters Association and adhere to academic and profession standards. All non-professionals who carry out some forestry practices will be licensed through special permits.

The administration of the association will be open to public scrutiny through the appointment of members of the public to the governing council and the legislated committees of the association.

There will be increases in accountability through public complaints and discipline processes, with a provision to protect individual rights.

Private landowners will maintain the right of determining how to manage their properties and they will have the choice of engaging RPFs. Unfortunately, today there is a lack of any substantive regulatory regime of silvicultural standards on private lands. However, should the landowner engage a licensed professional forester, then both professional and silvicultural standards will be met.

Grandparenting guidelines will require that those holding special permits will be required to practise to the same high standards that are set for professional foresters.

This bill will not affect others in doing their work. It will recognize only those situations where there is a need for professional forestry experience and expertise.

In conclusion, we need this bill, the Professional Foresters Act, to help ensure the sustainability of Ontario's

forests. In turn, this will help ensure the continuing social and economic benefits that are derived from the forest and the continuing health of forest communities. The credibility of Ontario's forest industry will be increased and its international competitiveness improved. Accountability to the public will be more focused, overall management costs will be reduced and forest health will be improved.

The Professional Foresters Act is a good bill. We believe that it is good public policy and we ask you to support it.

**The Chair:** Thank you very much. That leaves us a bit under two minutes per caucus, so time for one question, perhaps, from each caucus. This time we'll start with Mr Wettlaufer.

1630

**Mr Wayne Wettlaufer (Kitchener Centre):** Ms Verheggen, I'm an outdoorsman and one of the most hideous things that I see when I go fishing up in Mr Hampton's riding is clear-cutting. A couple of years ago I was in Germany and I was very impressed with some of the conservation that I saw over there. They go in and they clear-cut. They then open-pit mine and turn right around and plant the trees that were indigenous to that area, and they leave it for another 40 or 50 years until it can be harvested. In the interests of sustainability, do you see that this act would achieve some of that conservation?

**Ms Verheggen:** In terms of sustainability and conservation, the policies and guidelines are set out by the government. The guidelines for how work will be done are there because the public wants certain ways adhered to. So I see that basically this bill will ensure that the foresters adhere to the policies and guidelines of silviculture standards that are in place. If those silviculture standards are such that clear-cutting to a certain standard is allowed and the renewal efforts are set out certain ways, that's what we do in Ontario to promote the forests that are in Ontario, which are substantially different than the forests that are in Germany.

**Mrs Bountrogianni:** What are the academic standards, out of curiosity, for a professional forester right now? What are the expected academic standards for a forester?

**Ms Verheggen:** Basically you require a bachelor of science degree in forestry from a recognized university.

**Mrs Bountrogianni:** Do you know, as far as your registry, how many have those credentials versus those who don't who are practising forestry, roughly? Do you have any idea?

**Ms Verheggen:** I don't have the numbers. I know there are approximately 800 members of our association and some of them are practising, some aren't practising, and some are students, for instance. We haven't done a survey, because we don't always know who, of the people practising are not registered professional foresters. I don't have those figures.

**Mrs Bountrogianni:** I'm just wondering about the magnitude of the task as far as grandfathering and how



long they would be under special permits, only because I belong to a similar organization, the College of Psychologists, and we went through this exercise in the last five years. It's extensive.

**Ms Verheggen:** I think it will be extensive now. In my view, the organization of forestry in Ontario is a pretty tight-knit group. You're basically working for the industry, working for the Ontario government or consulting. The OPFA has a pretty good list of who the consultants are. But we would have to do a lot of work to figure out exactly where everybody is and what everybody is doing.

**Mrs Bountrogianni:** Is there enough space in programs out there that if people want to upgrade and therefore become accredited they can do so?

**Ms Verheggen:** Yes, there is.

**Mr Hampton:** I want to go back to the scope of practice, clause 3(1)(a), "the designing, specifying or approving of silvicultural prescriptions and treatments, including timber harvesting." I think that's mainly industrial forestry, isn't it?

**Ms Verheggen:** Yes, developing silviculture prescriptions and timber harvesting.

**Mr Hampton:** I'll go down to (f), "the planning and locating of forest transportation systems, including forest roads." That's mainly industrial forestry too?

**Ms Verheggen:** Yes, it is.

**Mr Hampton:** "The classification, inventory and mapping of forests ... ." The people who are most interested in forest inventory are usually forest products companies because you want to have a sense of what harvestable timber there is, what species etc?

**Ms Verheggen:** I agree with you at the current time, but I think that's changing. More and more people are interested in terms of what the forest inventory is and what the values of the forest are. So I would say that it extends beyond the forest industry.

**Mr Hampton:** "The assessment of impacts from planned activities on forests ... ." In my experience that's mainly industrial forestry too.

**Ms Verheggen:** It's the impacts of the industrial forest, but in terms of the assessment of those impacts I think that is more far-reaching in terms of how that's done.

**Mr Hampton:** "The auditing of forest management practices." Again we're concerned mainly with industrial forestry?

**Ms Verheggen:** On that one, I think we're concerned with the implementation of the forest management plan that has been approved in the field by the registered professional forester. I'm not sure exactly where you're going, but the plan is signed by a registered professional forester and the plan, as you know, deals with many areas that extend beyond silvicultural prescriptions and deal with other values.

**Mr Hampton:** It's mainly the other values I'm concerned with. One of the things that bother me is that I've read through this entire act—I even had my green pen out because I wanted to underline it if I found it. I wanted to

look for some references to forest conservation, forest preservation or forest sustainability. I don't see any reference to those things. You're right; it does refer to the Crown Forest Sustainability Act. It says that where there is a conflict, the Crown Forest Sustainability Act will prevail. But you're defining here the scope of practice, and the scope of practice, as I see it, is mainly defined in terms of industrial forestry.

**Ms Verheggen:** You could view it that way. As I look at it, it's been enshrined in the Crown Forest Sustainability Act, as you say, and in that act you go across biodiversity and conservation.

**Mr Hampton:** All those things are in the Crown Forest Sustainability Act. I don't deny that.

**Ms Verheggen:** It's that umbrella that the foresters act will work under.

**Mr Hampton:** But why is the scope of practice here defined essentially as industrial forestry? Of the items that are set down, you have:

"(a) ... silvicultural prescriptions and treatments, including timber harvesting;

"(b) ... certification of forests," meaning, I gather, certification of a forest management plan, extraction, harvesting;

"(c) the classification, inventory and mapping of forests ...

"(f) the planning and locating of forest transportation systems ... "

As I read the definition of "scope of practice," it is still very much in the language of the forest industry. In the context of the Crown Forest Sustainability Act, in the context of many of the things I think people in Ontario want to achieve and probably need to achieve if we want to continue to have a forest industry that is welcome to sell its products in the United States or in Europe, isn't this language a bit outdated?

**Ms Verheggen:** I think the language is there to make sure we were not being an exclusive organization and recognizing that in the management of forests you need expertise from ecologists, biologists; you need input from the public; you need—

**Mr Hampton:** I'm an environmentalist from the United States and I'm trying to keep Ontario forest products out of my jurisdiction. I hold up the Ontario Professional Foresters Act, 2000, and nowhere in the act does it refer to "forest conservation" in the scope of practice of a forester. Nowhere in the scope of practice of a forester does it refer to "forest sustainability" or "ecosystem sustainability." Nowhere does it refer to "forest preservation." If I'm hellfire bent to keep Ontario forest products out of my jurisdiction, I think I'd look at this and say: "This isn't about sustaining forests or conserving forests. This is strictly about industrial forestry, and that's the scope of practice of foresters in Ontario." Refute my argument.

**Ms Verheggen:** I would say to you that basically this piece of legislation is to guide the standards and practices of the forester in terms of silviculture and forest management. It is within the forest management plan context that



you will see and read the objectives of conservation, making sure we address all the environmental concerns.

**The Chair:** I'm afraid we've gone well over, Mr Hampton.

**Mr Hampton:** Why wouldn't we put them in this bill?

**Ms Verheggen:** Pardon me?

**The Chair:** I was just saying we've gone well over.

**Mr Hampton:** A rhetorical question: Why wouldn't you put them in this bill?

**Ms Verheggen:** They could be in the bill.

**Mr Hampton:** Shouldn't they be in the bill?

**Ms Verheggen:** When we went through previous versions of the bill, as they went through consultation, the scope of practice became more defined based on the consultation we had.

**Mr Hampton:** More industrial?

**Ms Verheggen:** Is the bill now more industrial? I wouldn't call it more industrial. It's certainly more defined.

**The Chair:** Thank you very much for coming before us. By the way, compliments on your Web page and, in particular, your statement on the Oak Ridges moraine, at a personal level. Thank you very much for that.

**Ms Verheggen:** You're welcome.

1640

## CANADIAN INSTITUTE OF FORESTRY

**The Chair:** Our next presentation will be from the Canadian Institute of Forestry, Mr Ferguson. Good afternoon. Welcome to the committee.

**Mr Bruce Ferguson:** Thank you very much. I think you've got copies of my paper that I'll present here. I'll be brief.

My name is Bruce Ferguson. I am the current president of a national non-government organization known as the Canadian Institute of Forestry / Institut du forestier du Canada. Our head office is in Ottawa. I live in Peterborough. I have been a registered professional forester in the OPFA for over 25 years and an active member of the Canadian Institute of Forestry for over 25 years as well.

Thank you for the opportunity to bring the viewpoint and support of the Canadian Institute of Forestry / Institut du forestier du Canada (CIF/IFC) members to you on this important matter of licensing professional foresters in Ontario. The CIF is a national organization of forest professional practitioners from all types of forestry careers and all across Canada. There are 23 CIF sections or chapters from the Yukon to Newfoundland and Labrador. We are 2,400 members who are foresters, technicians, ecologists, biologists, researchers, academics, all of whom are dedicated to the sustainability of Canada's most valuable and world-famous resource, our forest ecosystems. CIF members are very proud of their involvement in supporting Canada's national commitment to sustainable development and sustainable forests. We are also proud of our world-famous journal the Forestry Chronicle, which is published six times

yearly. I've got a copy here that some of you no doubt have seen. Should anybody want a copy—this is the millennium issue from January-February—we'll gladly give you copies. Perhaps you could just pass it around while I talk.

The mission of the institute is fourfold: to advance the stewardship of Canada's forest resources, to provide national leadership in forestry, to promote competency among our members, and to foster a public awareness of Canadian and international forest stewardship issues. I'll come back to these objects in a minute.

Firstly, I would like to tell you that CIF is in its 92nd year as a credible, non-government and non-partisan organization. Last fall at our Banff annual conference the Prime Minister of Canada delivered a video presentation praising the CIF for its contribution to making Canada a world leader in sustainable forest management. The CIF is involved in many affairs, including as a signatory to Canada's forest accord, participating on the executive committee and others of the National Forest Strategy and implementing what we can do in the action plan to it, to mention just a few of the strategy committees that we're involved in across Canada.

I'd like to point out just one strategic direction of the National Forest Strategy, which is number 2.17, wherein all of the signatories to the national strategy would encourage the establishment of legislation where it does not exist regarding the professional practice of forestry and registration and accountability of professional foresters.

The CIF also serves as secretariat to the Canadian Federation of Professional Foresters Associations. CIF and its members continue to actively promote and support the accreditation and licensing of professional practitioners in all provinces of Canada. Not only do we advocate the licensing of professional foresters as in some of the other provinces; we also look for the certification of our forest technicians and technologists so they're all in a professional classification.

There are seven professional foresters' associations in Canada. Of the big four forestry provinces, only Ontario lacks the level of legislation to regulate the practice of foresters and forestry. Ontario has a bountiful forest, reasonably well managed and yet full of challenges to resolve over the coming years to truly have a sustainable forest. A forest must meet the needs of many future generations, not only their socio-economic requirements but, most importantly, for the health and beauty of the planet.

Canadians repeatedly in polls and surveys put the environment high in their expectations. As forest stewards we must perform our duties and responsibilities with the highest standard of professional knowledge. Forestry too often is seen as just a science-based practice. What often goes unseen is the dedication of all forest practitioners towards preserving forest ecosystems for all life forms and the intrinsic values people place upon the forest. This is also true for those who have never even walked in Canada's majestic forests.



There was a recent survey conducted in April-May 2000 by Environics—the one that Ms Verheggen spoke to—in which 50% of the interviewees were contacted in Ontario. The interviews were with rural landowners and questioned them on their land and forest stewardship. Environics noted this survey had the highest first-call response rate of any they had ever conducted and people were very willing to talk about their views on stewardship. Of worthwhile note was the very high endorsement that they believed forestry professionals should be certified or licensed to practise: a full 82% supported this.

The CIF has long advocated and promoted organizations of forest practitioners to pursue “licence to practise” and mandatory continuous learning. The bill in Ontario will do just that and raise the public’s impression of how well our forests are being managed by knowing that professional forest stewards in the province are committed and self-regulated by law.

As you can tell, I am hitting upon the four primary objects of the CIF/IFC. I have had the good fortune of travelling throughout Canada, especially in my home province of Ontario, and I have always come home with the profound feeling of how every forest practitioner I’ve met has had a great enthusiasm and love of forestry. The public should know and see this and be proud that we are responsible and caring managers devoted to the best available science in our pursuit of the best practices and sustainability.

In Canada and worldwide there is a rapidly growing recognition that sustainable forests are paramount and an assurance must be given to society. Independent forest certification organizations are certifying forests around the world, including in Canada and Ontario. To ensure the credibility of these certification schemes requires that the public must know that competent and regulated forest professionals are doing their job to the best of their ability. How will Ontario and Canada benefit? By continuing to raise the benchmark of forest sustainability and by continuing to market Ontario’s forest products worldwide with a consumer assurance that they are purchasing products from certified sustainable forests managed by professionals with the highest standards.

Accountability is linked to our mandate, our code of ethics and the mandates and codes of all professional organization bodies. Licensing will help ensure that a professional who meets the academic and professional standards of the association is practising proper management. The professional organization has the responsibility to ensure that its members are meeting the high standards and practising according to the rules and regulations laid out.

In summary, the CIF/IFC fully supports the adoption of the Professional Foresters Act, 2000, in Ontario and can say without reservation that it is of national concern that Ontario continues to stay on the leading edge of forestry. Crucial to this is the licensing of professional foresters. These dedicated men and women are ready to assume the responsibilities of a regulated practice in the public interest of managing towards sustainability of Ontario’s forests.

Thank you for this generous opportunity to speak in support of the bill.

**The Chair:** Thank you very much. That leaves us a bit over a minute, a minute and a half per caucus, so time for one quick question each. This time in the rotation we will be starting with the Liberals.

**Mrs Bountrogianni:** Mine will be very quick. Thank you for coming and supporting this bill. I apologize for my lack of knowledge of forestry. Are other provinces regulated the way this bill outlines for Ontario or is Ontario the first?

**Mr Ferguson:** No, we would be the fourth. Quebec and British Columbia have had it for many years, and recently Alberta. So of the big four I was referring to, Ontario being up there, we’re the only one of those that are not. There are other professional forester associations in Canada with the same sort of right to title, and there are two or three of the small provinces that do not have any, like Manitoba and Saskatchewan, for example. The numbers are few, but they’re working on it.

1650

**Mr Hampton:** I’ll get on my soapbox again. I heard you in your comments mention forest sustainability several times. In the scope of practice it says, for example, “the assessment of impacts from planned activities ...,” ie, logging. It says, “the appraisal, evaluation and certification of forests ...” I think that means certification of the forest management plan, ie, logging. You want this to stand up, right? Shouldn’t there be something in here about the assessment of forest sustainability, assessment of forest conservation, assessment of ecosystem sustainability?

I understand what the Crown Forest Sustainability Act says. The language here says to me that this is 80% about industrial harvesting, and I’m not sure that’s where foresters want to be as we enter the new millennium. I don’t think you want your scope of practice defined that way as we enter the new millennium.

You used the words “forest sustainability” a lot, you used the words “forest ecosystem,” but it’s not in your scope of practice. Doesn’t that bother you?

**Mr Ferguson:** What I would like to see is a broader objective of what our forest practices are about. I would concur that I would like to see some improved wording in that regard.

I don’t think this in particular does limit it to just industrial forestry, in my mind. I never read it in that context at all.

**Mr Hampton:** I’m taking it as somebody who says: “I’m a California environmentalist. I want to keep those damned Canadian forest products out of my state.” So I go to the Ontario Professional Foresters Act, 2000, and I read the scope of practice and there’s not one mention in the scope of practice of forest sustainability, forest conservation or anything about protecting the ecosystem. I say: “These people up there are not worried about forest sustainability. They’re not worried about forest conservation. This is 90% extraction.” Refute my argument.

**Mr Ferguson:** I would just comment further as to what Ms Verheggen mentioned. We have to operate



within the acts, regulations, policies and procedures of the provinces and, as such, if we are doing our job as a forester in preparing and writing the prescriptions in any kind of plan, whether it's a 10-acre wood lot or a million-acre crown licence, we would do so in concert with the assistance and advice of many other types of professionals we would need. No one has the gain on all of this.

**Mr Hampton:** Wouldn't you want that defined in your scope of practice?

**Mr Ferguson:** That we would work with many other professionals?

**Mr Hampton:** No, those general things: forest sustainability, forest conservation.

**Mr Ferguson:** Those would be my words. Yes, I would.

**Mr Hampton:** I'll get off my soapbox now.

**Mr Ferguson:** We're in the new millennium. I would like to see the same.

**Mrs Julia Munro (York North):** Thank you very much, Mr Ferguson, for coming here. I want to ask you a question with regard to the note you made on page 3 about the Environics survey and actually tie that in with a comment in Ms Verheggen's presentation which talked about private landowners. The reason I'd like to tie those two together is to ask you, with regard to those two pieces of information, what you see as potentially your responsibility under this act with regard to public education. When I say "public education," I'm really talking about private landowners. Do you see a role for you under the umbrella of this piece of legislation?

**Mr Ferguson:** The other professional forester organizations in Canada, like in British Columbia, for instance, have a public awareness and public education component to the organization. There is never enough of that. In concert with other organizations such as ourselves, the Canadian Institute of Forestry, the Ontario Forestry Association, the Canadian Forestry Association and so forth, we're developing bigger and better plans to get that communication out there. I think the OPFA will have that as well.

**Mrs Munro:** In other words, you would see that this legislation would provide you with an avenue to bring through the issues of conservation and sustainability?

**Mr Ferguson:** Most definitely.

**The Chair:** Thank you very much for coming before us. We appreciate your bringing the national perspective to these hearings.

#### ONTARIO FORESTRY ASSOCIATION

**The Chair:** Our next presentation will be the Ontario Forestry Association, Erik Turk. Good afternoon, Mr Turk, and welcome to the committee.

**Mr Erik Turk:** Mr Chair and members of the standing committee on general government, thank you very much for inviting me here today and giving me the opportunity to address the committee on what I think is a really important piece of legislation for the people and

the forests of Ontario. I am a registered professional forester, and I serve the Ontario Forestry Association as their executive director. I speak to you today on behalf of our board of directors and the membership of our association.

The Ontario Forestry Association supports this bill. We support a bill which will provide the profession of forestry with the power to license registered professional foresters in Ontario and will promote high standards of sustainable forest management.

The Ontario Forestry Association is a non-profit association with over 1,000 members across Ontario. Our mandate is to raise awareness and understanding of all aspects of Ontario's forests and to develop a commitment to stewardship of forest ecosystems. We promote the need for a balanced perspective on forest issues. We are the association for people in Ontario who like trees, whether you're a cutter or a keeper.

Our association has two main program areas. We have education programs that focus on young people in Ontario. We coordinate the delivery of balanced forestry and environmental education programs for elementary and high school students across the province.

Second, we are involved in landowner programs for woodlots and woodlands. We provide information for forest landowners, primarily in southern Ontario, but also across the province. We represent these private forest landowners in support of licensing of professional foresters.

Our association continues to be involved in assisting landowners to manage their private woodlots in a sustainable manner through providing educational materials and also administering forest management programs. Our number one forest management program is the managed forest tax incentive program, otherwise known as MFTIP, which is administered by the Ontario Forestry Association and the Ontario Woodlot Association on behalf of the Ministry of Natural Resources. MFTIP is a voluntary program that provides lower property taxes to participating landowners who agree to conserve and manage their forests through preparation of a forest management plan.

Professional foresters are involved in the preparation of these plans for landowners, for MFTIP and for other purposes. Professional foresters are also involved in the provision of a wide variety of consulting services on both private and public lands.

In carrying out these activities, landowners need to be aware of the sustainability aspects of the activities taking place in their woodlots, and professional foresters need to understand their obligations for the promotion of the highest standards of sustainable forest management. Landowners must be aware of this obligation and understand that they have recourse in the event that the highest professional standards are not maintained. Accountability must be established and enforced. Professional accountability will increase value for our members who use forestry services provided by foresters.

In Ontario, anyone can describe himself or herself as a forestry consultant. They are in business as individuals or



as staff of companies and agencies and may not be held subject to professional standards. It is critically important that standards be set and that landowners understand there is an independent professional body with the power to license professionals and monitor performance. The Ontario Forestry Association does not suggest that all forestry consultants be licensed. We do subscribe, however, to the concept of a registered professional body to license professional foresters and to hold them accountable for their work.

A large majority of landowners are concerned about their forest properties. All have a sense of responsibility and pride of ownership. Landowners want to do the right thing. Our recent experience with MFTIP indicates that landowners take great pride in developing quality forest management plans and working with qualified consultants. In surveys conducted with participants in the program, many have said that the knowledge they gained about their forests from working with foresters was very valuable both economically and environmentally.

Will licensing make a difference? We believe it will. Foresters involved in private land forestry will promote and implement high standards of sustainable forest management. This action alone will make a difference on private lands when foresters are directly involved. The development of these standards will also set the bar for others involved in this type of work. In addition, landowners will have recourse in the event of poor workmanship and sloppy practices. The Ontario Professional Foresters Association will then be positioned to inspect work relative to standards and determine if sanctions are required. The accountabilities will be clear, as foresters will be required to adhere to professional standards set and administered by an independent licensing body.

1700

Our recommendations: We feel that professional foresters should be licensed in Ontario. We support the bill. We feel it's good policy and will be good for Ontario, for the public forests, for the private forests and for landowners. We urge that this committee support the bill and have foresters licensed in Ontario.

**The Chair:** Thank you very much. That leaves us with about two minutes per caucus. Mr Hampton, we'll start the questions with you this time.

**Mr Hampton:** I am troubled by the fact that the scope of practice of foresters, as proposed, would not include the assessment of forest sustainability, the assessment of forest conservation strategies and the assessment of forest preservation strategies. Are those within the scope of practice of a forester?

**Mr Turk:** I feel they are, and the elements you mentioned in the current scope of practice, as it is to decide, all contribute to the determination of sustainability and conservation. So all of those, the elements of the scope of practice, really add up to me to mean the words "sustainability" and "conservation."

**Mr Hampton:** As I understand the importance of the term "scope of practice" in this legislation, you can be held accountable for those things included in your scope of practice. Is that right?

**Mr Turk:** That's my understanding.

**Mr Hampton:** You could not be held accountable for those things that are outside your scope of practice.

**Mr Turk:** I'll agree with you there.

**Mr Hampton:** I gather registered professional foresters in Ontario, as this act reads—it's debatable whether they could be held accountable for forest sustainability, because it's not mentioned. It could be an argument for debate.

**Mr Turk:** I think the applicability of sustainability also depends on the desires of the landowner, and, in this case, on crown lands in Ontario, that would include the people of Ontario, who help determine what sustainability is.

**Mr Hampton:** But my point to you is, if it isn't in the act it then becomes a matter for debate. I could say, "I think you should be held accountable for something called forest sustainability or forest conservation," and your lawyers could say, "Well, it's not in the act, and we don't think they should be held accountable." So it becomes a debatable point, whether it's included, to what extent it's included and what falls under that rubric.

**Mr Turk:** That's the real value of the word "sustainability." It requires the input of public. The professionals must definitely advise on it, but it also involves the input of public desires and public needs.

**Mr Hampton:** The Crown Forest Sustainability Act defines forest sustainability, right? It has the indicia of forest sustainability. Yet, as I read this bill, it's not within your scope of practice or, being charitable, it's debatable whether it's within your scope of practice. It's in the title, the Crown Forest Sustainability Act, and the definition section spends a lot of time defining it, yet it's not within your scope of practice.

**Mr Turk:** If the Crown Forest Sustainability Act is the expression of the people of Ontario's desire to have a sustainable forest, that's the document that defines sustainability, as it does.

**The Chair:** We've gone well over. Mr Ouellette.

**Mr Jerry J. Ouellette (Oshawa):** Thanks for your presentation. To follow up on the scope of practice and that area, being a former—or, well, somewhat still; I just had I don't know how many thousand cubits delivered. I haven't had a chance to look at it yet, but being a cutter/skidder operator I know a bit about the forests and some of the practices. My area of concern would be with regard to natural progression. The forestry industry appears to be based on what's going to be the fastest producer. Normal progression in a forest gives us a coniferous forest, which then leads to a soft deciduous and then to a hard deciduous. Is your practice promoting those habits? Because, what I see a lot of in the forest industry is, "What's going to give us the best economic value?" I have some concerns about that.

**Mr Turk:** I think that professional foresters would be the best people to consult with about what the proper progression of the forests are. I think that foresters would include both biological and environmental aspects and



keep those in mind, in addition to including economic considerations.

**Mr Ouellette:** As well, the wise use of a forest is so critical to a community as a whole. I know that, and I've been told, although I haven't seen it, that there are quite a few sticks of number one cherry essentially going to be assigned for firewood, as opposed to being used for what it should be, as veneer logs or proper saw logs. In those practices, do you have anything that would promote the wise use of the forest?

**Mr Turk:** I think it would be foresters' responsibility to ensure that in cases where landowners have made decisions to harvest forests, as they may make decisions to maintain it for conservation, that they do get the best end use if there is harvesting involved.

**Mr Ouellette:** I know in the region of Durham there is a cutting bylaw which essentially says that you have to have a licensed individual come in and survey the land prior to any cuts on private land being allowed. Essentially, what that requires on a 10-acre plot is three to five one-acre plots, and you have to categorize and list the size of the trees etc. Should this legislation proceed, are these requirements something that you envision would pass throughout the province?

**Mr Turk:** I think that would not be a result of this legislation. I think the forests of Ontario are very diverse across the province and that different municipalities can manage those forests differently.

**Mr Ouellette:** One of the problems in the region of Durham is that—OK, Mr Chair—there are no bylaw officers who are trained in any way, shape or form and have no idea of how to enforce an act like that. Thank you, Mr Chair.

**Mrs Bountrogianni:** I apologize for missing your oral presentation, but I did read your brief and consulted with my colleague. He basically wanted to relay to you, and I agree, that we thank you for your input. We believe, as you state on page 3, that foresters involved in private land forestry, even though they don't have to, will eventually increase the standards, as well as have recourse, if their own processes aren't sufficient, to go to a certified forester. So basically, on behalf of both of us, thank you for being here.

**The Chair:** Thank you very much for taking the time to come before us here today.

#### GRANT FOREST PRODUCTS INC

**The Chair:** Our next presentation, Grant Forest Products, Inc, Faye Johnson. Good afternoon, welcome to the committee.

**Ms Faye Johnson:** Good afternoon.

**The Chair:** Perhaps the clerk can assist you with that.

**Ms Johnson:** Just a bit of a backdrop for my presentation.

Good afternoon, ladies and gentlemen. Thank you for giving me this opportunity to address the standing committee. My name is Faye Johnson and I also am a regis-

tered professional forester. I have been a registered professional forester since 1985.

By way of a brief introduction, I graduated from Lakehead University in 1982. I worked for the Ministry of Natural Resources from 1979 as a student, starting out as a tree planter in northern Ontario, and worked with the MNR until 1996. In 1996, I moved to Grant Forest Products in Englehart, where I work today as a woodlands manager. I guess you could say that I am an industrial forester.

I'm here to represent Grant Forest Products. I want to tell you a bit about our company. It's a northern Ontario, privately owned company. We're the fifth-largest producer of oriented strand board in North America and we own two mills, in Timmins and Englehart, where we utilize two million cubic metres of trembling aspen on an annual basis. As a matter of fact, our Englehart facility is the largest OSB facility in the world. To put that into perspective, it's a little less than 10% of the province's annual allowable harvest. Of the oriented strand board that we make, about 95% is exported to the United States. We employ about 1,200 people, directly and indirectly, most of them in northern Ontario.

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This overhead shows you graphically where we get our wood supply from. As I've said, we utilize only trembling aspen at the moment. The dots represent the volume of wood, the biggest dot being where we get the most volume, and the littlest dot being where we get the least volume. You can see that our woodshed ranges from Pembroke in the south to Big Pic, which is close to Geraldton, in the northwest.

I and Grant Forest Products support the licensing initiative because it increases accountability for forest management practices to help ensure the continuing sustainability of Ontario's forests. For me, that means that when I hire a forester, I'm hiring someone who is confident in acting to a prescribed level of conduct. Also, because we do not have a sustainable forest licence in our name alone, it is important to me that foresters working for sustainable licence holders are managing the land base in my interests and are also working within a prescribed set of standards.

Secondly, I believe that licensing will increase the level of accountability for foresters, thereby increasing the level of credibility. These two factors should work together to decrease the number of confrontations on land use within the province. This will make the implementation of forest management plans more effective and more efficient. This will also lessen the risk to local communities, especially in the north, that are dependent on the stability of jobs over the long term.

Thirdly, the employment of licensed foresters should increase credibility in the development and implementation of certification standards and systems that are developed on a national and international level. As I mentioned, our markets are almost 95% American. That would be in the neighbourhood of US\$250 million annually in sales. It is important to Grant Forest Products



that Ontario and its forest industry be seen as credible at an international level.

Lastly, I would like to say that I feel this bill complements at least two pieces of legislation: the Crown Forest Sustainability Act and the Environmental Assessment Act. This bill reinforces both the provincial and national objectives of forest sustainability, which in my view is in the public interest.

When you think about it, the first professional foresters act was legislated in 1957. That was more than 40 years ago and before I was born. Sometime before that, we legislated the Crown Timber Act. Since then, we've changed our management practices many times. Even in my lifetime as a forester we've changed them many times, all the while evolving when better science and better information was made available and warranted change.

The Environmental Assessment Act of the 1980s really helped to move forest management into the public eye. That was a positive move. The CFSA also legislates requirements for public involvement. I think that the licensing of foresters is a logical step in that evolution.

The public will continue to become more interested in its forests. I believe that at some time in the not-so-distant future, they will demand that foresters are licensed. They will demand a higher level of credibility and accountability. If we become licensed now, we will be in a position to evolve and grow with the requirements of today's society and the requirements that they will place on foresters and forest management at the local and global levels.

Grant Forest Products supports this bill. We believe it's good for Ontario, its forests and the forest industry. We urge that this committee support it as well.

**The Chair:** That leaves us with, I think, more than enough time for questions, maybe three minutes per caucus, starting with Mr Ouellette.

**Mr Ouellette:** Thank you for your presentation.

In regard to the scope of practice, I see that the forestry industry is changing significantly. I can recall being in Foleyet and seeing rooms this size with aspen going to waste. I asked the cutters why and the response was, "We don't have market for it."

Now, I know that in Gowganda they have a mill that produces the large. It goes down to three inches at the butt, which is what they require for, I think it is, finger-joining. The same in Hearst, whereby the changes that are taking place there now have the cedar mills that are promoting cedar shingles and other areas. I hope that there's a lot more promotion of the wise use of our forests by the industry.

The one thing that I would recommend and say to most of the presenters is that right now I know that there are I don't know how many cubits of black cherry rotting in Sault Ste Marie. I just mentioned the aspen in Foleyet. When I talk to the other companies there is a real void in the industry in the communication method, so that all the participants know where the market and the buyers and the sellers are. A promotion of that, I think, would be one

way that we can promote wise use of the forest. Do the foresters actively promote or work in those areas to ensure that those sort of things still happen in the future?

**Ms Johnson:** Do you mean on a community-by-community level?

**Mr Ouellette:** Right now I know that in order for them to get the fibre they needed in Sault Ste Marie, they had to buy black cherry. He has no market for that; he doesn't use it. It's sitting in the yard rotting. Right now there are probably all sorts of individuals within the forestry community looking for that product.

**Ms Johnson:** As you can see from the map, we've pretty well used the majority of the aspen in northeastern Ontario, and it only makes sense, especially in the management units where we do not utilize the aspen fully, that we work with the other companies that are harvesting conifer to harvest stands, take the aspen out and deliver that aspen to us. Then the lower priority becomes the stands of pure aspen that we keep for future use.

**Mr Ouellette:** What happens with the non-utilized product on your licence?

**Ms Johnson:** There are very few units where there is a non-utilized product. In the Hearst area, perhaps Kapuskasing, we run into that. We try very hard to ensure that the non-utilized product stays standing.

**Mr Ouellette:** So mostly it's trembling aspen you mentioned, but what about birch or any of the other products that are still in those areas that you've been assigned?

**Ms Johnson:** They remain standing.

**Mr Ouellette:** So you don't have other methods? Because I know birch is in large demand. The price of birch right now is rather high. There are companies out there actively seeking—as a matter of fact, I know someone who is looking for 6,000 board feet of white pine, so if anybody knows of any, talk to me after I leave.

So they're not being utilized, then? You just said the birch on your licence is not being utilized.

**Ms Johnson:** Presently, birch in some of our areas in the northwestern part of our woodshed is not being utilized, and it is left standing. We may have the opportunity in the future at Grant Forest Products to utilize birch, and at that time it will all go to our two mills.

**The Chair:** Thank you, Mr Ouellette. Mr Chudleigh, you had a quick question?

**Mr Chudleigh:** Just a quick one. If you were asked by a European environmentalist to substantiate that this wood came from a sustainable forest that was managed in a conservation-conscious manner, could you do that?

**Ms Johnson:** Sorry?

**Mr Chudleigh:** Could you confirm to that European company, to their specs—will this act help you do that?

**Ms Johnson:** This act will help us do that. As I said, it complements other legislation that we have in place. I'm thinking in particular of the Crown Forest Sustainability Act. As I've said, we receive our wood from areas that are held by other sustainable licence holders, such as Tembec, and they have moved towards certification.



That's something that we are also looking at very closely right now. In a lot of those areas, I could say that the wood comes from a certified forest also.

**Mrs Bountrogianni:** Thank you for your presentation. I'll ask you a question that really refers back to what Mr Hampton asked earlier. I find his statement a lot less disagreeable now, as I'm learning throughout this afternoon.

In my association, for example, in the College of Psychologists of Ontario, it's right in our code of ethics and our standards and procedures that there are certain environments that, if it's detrimental to our clients, we have to refuse, even if we lose our job or whatever. We have to refuse those conditions. In other words, we have to go to bat for our client. In my college, there is very little protection for us by our association. We're sort of expected to do this but left on our own legally. Given that analogy to this bill, from your experience as a forester, are there any protections—getting back to what Mr Hampton asked earlier—for someone who says, "I can't do my job well here in a public forest because of the cuts in resources," or whatever? How would you comment on that? I confess I didn't quite comprehend the initial discussion—

**Ms Johnson:** I think George spoke to it briefly, but the way I would deal with it is much the same way he would deal with it. First you have to ensure, as a forester, that what you want to stand up for is actually defensible. You have to ensure that—although we practise to a standard, perhaps we are being too idealistic. I think that's where our professional body can help us and determine if we are being too idealistic or being realistic. If, after that discussion, it's decided that it is a realistic problem, then I believe that with the bill as it reads there would be protection from the association in terms of not being able to be fired, if that's what you mean, by your employer.

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My employer, Peter Grant, is an engineer. He supports this bill. They have the same kind of protection with the engineers. As a matter of fact, Peter Grant will not hire a forester unless they are a registered professional forester. He really believes there should be a high standard, and in supporting this bill I think he believes the standard should be even higher. As a result, I don't think I have to worry about being reprimanded by him, because he's a very professional person. I'd like to say that about a lot of the companies.

**Mrs Bountrogianni:** That was my next question: How representative would Peter be?

**Ms Johnson:** I've worked for both the Ministry of Natural Resources and the forest industry. When I made the decision to move to the forest industry as a professional—because I really believe I became a forester because I'm an environmentalist and I want to manage the forest in a sustainable manner and I'm very interested in forest conservation. I believe you can do that with harvesting. I believe that I am an environmentalist. When I decided to take the job with the forest industry, as a

professional I was concerned that perhaps I would have to change my standards. I was very happy after a few years to realize that, no, the industry standards in my view are at least as high as the standards of the government.

**The Chair:** Thank you very much, Ms Johnson. I appreciate you, taking the time to come before us here this afternoon, and particularly for adding a little colour to our surroundings.

With that, colleagues, we are now at the stage of committee consideration of the draft text of the proposed legislation. I'm going to call for any comments, questions or amendments to the draft section. Mr Hampton apologizes. He had to leave for another engagement. I think it's safe to say—and I did have an opportunity to speak to him briefly—that his one concern is the definition under "scope of practice." I think we might have an opportunity to ask the House leaders for rapid consideration of second and third reading if we can digest what we've heard here this afternoon and perhaps make appropriate amendments.

**Mr Chudleigh:** If it's appropriate—and I understand this is not an extremely formal process—I might suggest that under section 3(1), in the second line—perhaps I could read the whole thing:

"The practice of professional forestry is the provision of services in relation to the development, management, conservation, and sustainability"—adding those two words—"of forests and urban forests where those services require knowledge, training and experience equivalent to that required to become a member under this act and includes,"

That way the conservation and sustainability is in the preamble to the scope of practice before it gets into the identification and is therefore assumed, I would expect, to be part and parcel of (a) to (f) in the consideration of the duties of a professional forester.

I don't know if it's appropriate or not. We might get some comment from our assembled guests on that as well.

**The Chair:** That might be something we could do. First I'll ask Mrs Bountrogianni if she is amenable with that proposed change. It's not normally done that we would invite witnesses back a second time for a show of hands—

**Mr Chudleigh:** We have a lot of knowledge in the audience here. It would be a shame to waste it.

**The Chair:** I don't see any shaking heads back in the audience there to adding those two words to the definition. I think it would probably capture Mr Hampton's concerns. I obviously can't speak for him, but that seemed to be the gist of his question. Perhaps, either from legislative counsel or from you, Mr Chudleigh, I wonder if, in looking at the bylaw powers on page 31, sections 18 and 19, that would then resolve any other lingering concerns Mr Hampton or others might have. It tells me there that the body can define the standards, qualifications etc pertaining to the membership. They could certainly flesh out further definition of those two



categories. I don't know if you wish to comment on whether that's a correct assumption or not?

**Mr Chudleigh:** It would appear so.

**The Chair:** Do we have agreement to make that change to the draft bill?

**Mr Chudleigh:** Can we make that a motion?

**The Chair:** If you wish.

**Mr Chudleigh:** Fine.

**The Chair:** Mr Flagal, have you been able to digest that?

**Mr James Flagal:** I think I have. If I understand it correctly, on the second line it would read, "the development, management, conservation, and sustainability of forests and urban forests"?

**The Chair:** Correct.

**Mr Flagal:** OK, and I would also point out that the bylaw powers in section 53(1)—

**Mr Chudleigh:** Page?

**Mr Flagal:** Page 33. That would also be another ability for the council to speak to those types of standards, that allow them to prescribe governing standards of practice for the practice of professional forestry, where they could flesh out those things.

**Mr Chudleigh:** I just got the sense that perhaps Mr Hampton would like to see it in the scope of practice, as opposed to in the governing standards of practice that would be implemented by the association. This would make it part of the act. The others would make it as part of their operating standards. I think it would be stronger placed in the scope of practice.

**Mr Flagal:** It's not a change. It's another example of where they can flesh out those particular principles.

**The Chair:** Are there any other comments or proposed amendments to the bill? Ms Munro?

Forgive me, Ms Munro, since Mr Chudleigh made that as a motion, I should see if there are any further comments about the amendment. Seeing none, I'll put the question.

All those in favour of Mr Chudleigh's motion? Carried.

Having gone through that formality, Ms Munro?

**Mrs Munro:** It becomes redundant. I was trying to jump in there before you called the question, as part of the discussion.

**The Chair:** Uh-oh. We can amend an amendment.

**Mrs Munro:** No, I just wanted to comment on the logic that is inherent if you look at development, man-

agement, conservation and sustainability. They together, obviously, complement each other. I think one could make the argument that the only way you have development and management is in fact if you have conservation and sustainability.

**The Chair:** Any further comments on sections 1 through 69 of the act?

Shall the committee adopt the text of the draft bill, as amended?

All those in favour? Opposed, if any? The text is adopted.

As was mentioned earlier, my name will appear automatically as a sponsor of the bill, but there is an opportunity for all the permanent members of our committee to have their names added as well. I wondered if, by a show of hands, anyone else wishes to have their name appear as a co-sponsor?

What I will do, over and above the four members who are here, is have the clerk contact directly the other members of the committee and offer them the same opportunity.

Clerk, all four members present indicated that.

I'm going to ask, in light of the fact that this is the last week the Legislature is sitting and the very positive response we got from witnesses of all stripes today, whether the committee would see favourably to my, after tabling the bill, requesting immediate second and third reading and approval of this bill. Would that be something—

**Mrs Bountrogianni:** Have you talked to Mr Ramsay? Would he be OK with that?

**Mr Chudleigh:** I understand he would be, but I can't speak for him. I didn't speak to him specifically about that issue.

**Mrs Bountrogianni:** I know that he's fully supportive of the bill. He had no questions. He was fully supportive.

**The Chair:** Perhaps what I can do, if there's no opposition from the members present, is seek similar approval from the other members of the committee. If they so choose, I think we could prevail on our respective House leaders to look favourably on unanimous consent to that.

With that, that concludes our consideration of this act. Thanks to all the witnesses and thanks to the members of the committee.

The committee stands recessed to the call of the Chair.  
*The committee adjourned at 1729.*

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First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 29 August 2000

# Journal des débats (Hansard)

Mardi 29 août 2000

## Standing committee on general government

Subcommittee report

Motorized Snow Vehicles  
Amendment Act, 2000

## Comité permanent des affaires gouvernementales

Rapport du sous-comité

Loi de 2000 modifiant la Loi  
sur les motoneiges



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Tuesday 29 August 2000

Mardi 29 août 2000

*The committee met at 1241 in the Best Western Lakeside Inn, Kenora.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the committee to order. Welcome to all the committee members and all of our guests as we start our hearing, the first of five days of hearings on Bill 101, the Motorized Snow Vehicles Amendment Act, 2000.

Our first order of business is the report of the subcommittee. Normally we would read that into the record. I can ask the committee members whether you want to dispense with that and simply have Hansard deem it to be read in, if somebody would like to move the adoption of the report.

**Mr Joseph Spina (Brampton Centre):** So moved.

**Mr Garfield Dunlop (Simcoe North):** I'll second it.

**The Chair:** Any comments? Business arising from the report?

All those in favour of the adoption of the report? It's adopted. Thank you.

MOTORIZED SNOW VEHICLES  
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI  
SUR LES MOTONEIGES

Consideration of Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement / Projet de loi 101, Loi visant à favoriser la durabilité des pistes de motoneige et à accroître la sécurité et les mesures d'exécution.

## MINISTRY OF TOURISM

**The Chair:** That takes us to our first deputation, and that would be from the Ontario Fur Managers Federation.

**Mr Spina:** Excuse me, Mr Chair. I'm sorry, I should have advised you that I was under the understanding that I was to do a short opening statement.

**The Chair:** My apologies. I didn't see it on the agenda here, so you've taken us both by surprise.

**Mr Spina:** We should have given it to the clerk. I apologize.

**Mr David Christopherson (Hamilton West):** On a point of order, Chair: Are you going to be allowing responses?

**The Chair:** I'd be happy to do that.

**Mr Spina:** I am pleased today to speak on the opening of these public hearings on Bill 101, an act to improve the sustainability and safety of Ontario's snowmobile trails. I think we're all particularly pleased to be here in beautiful Kenora. I always like visiting this part of the province and I haven't been here in at least a month and a half.

Snowmobiling is an important winter recreational activity in Ontario for both residents and tourists alike, and among other benefits, it creates an economic boost to Ontario's communities during the winter snowmobile season, a time of year when the tourism industry needs that increased business. In fact, in some parts of this province, it is a larger industry than it is in the summer months.

Given the extensive network and the increased use of snowmobile trails, a mechanism needed to be developed to ensure that people continue to have access to this recreational activity into the future. At the same time, the government is committed to improving the safety of snowmobiling and reducing snow vehicle fatalities, which have averaged, sometimes, as high as 30 in winters in Ontario.

The act proposes revisions to the Motorized Snow Vehicles Act and the Trespass to Property Act, and it maintains the mandatory user-pay approach through a permit for users of the Ontario Federation of Snowmobile Clubs trails only, significant safety enhancements and new enforcement provisions. These measures will ensure that the people who benefit most directly from Ontario's organized snowmobile trail system will contribute to its upkeep, and the recommended safety and enforcement enhancements will help reduce the number of incidents that occur on the trails. These safety proposals were recommended by a joint private-public sector partnership called the Ontario Snowmobile Safety Committee.

We've also heard from many other groups that have made suggestions of their own. For example, traditional users of snowmobile trail systems such as hunters, anglers and trappers currently are not required to purchase trail permits from the OFSC. We have said all along that we will try to accommodate these traditional users by implementing a mechanism to exempt them from purchasing mandatory trail permits for the trail system.

The Ministry of Transportation will develop the fee structure in consultation with the snowmobile industry, if



the bill is passed. MTO will also be looking at amending the bill to further clarify this issue so that exemptions can be made via regulation.

The government, in co-operation with the snowmobile community and other stakeholders, needs to take action if snowmobiling is to remain a significant winter economic activity in our province. It is now a \$980-million industry in our province in terms of its economic impact. I urge members of the committee to keep this in mind so that we can support the development of a safer and more economically sustainable snowmobile trail system for this wonderful province of Ontario.

**The Chair:** Mr Brown, do you wish to make some opening comments?

**Mr Michael A. Brown (Algoma-Manitoulin):** First off, I would like to reiterate what Mr Spina said in regard to what an important and significant economic factor snowmobiling has been and is continuing to be—and it is growing—in the province of Ontario, particularly in northern Ontario.

I represent Algoma-Manitoulin, the third-largest of the northern constituencies and probably one with as many kilometres of trail as any other. I represent groups such as the good people in Chapleau, who have the largest trail system maintained by a particular club in the entire province, and constituents in Wawa down through Elliot Lake on the North Shore and across Manitoulin.

One of the difficulties we're finding with the bill is the problem of traditional snowmobile users of trails. I have constituents who have used a particular trail for 30 years. It was not a federation of snowmobilers trail at the time; it now is. They just want to access their own particular lake that they've been going to for 30 years and will not be using the federation's trails other than the mile or two that they've maybe even cut out of the bush to begin with. We have the trappers and the prospectors and other groups who also use the trails, and have used them and often developed the trails in the very beginning. So there are some difficulties with the exemption process. I'm interested in Mr Spina's talking about an exemption process but I'm not quite clear about how that would work, and how it would work for those particular individuals who don't belong to any major group who would want to do what they've always done and really will not be using the broader trail system.

I also have concerns with regard to the allocation of funds from the trail permits. If I can use the Chapleau example again, a lot of the users of their trail system do not purchase the permit from Chapleau. They perhaps buy it at the border in Sault Ste Marie; they may buy their permit in Barrie. When you're trying to operate a huge trail system, as the Chapleau club is, that becomes problematic. I know the federation has worked over the years trying to find appropriate sharing models to look after clubs like Chapleau, but on the other hand I don't think we're quite there yet and I would be interested in the government making some suggestions with regard to how the allocation of funds might be better used.

We should consider the fact that snowmobiles also use a great deal of fuel. Not one cent of the fuel tax that is

collected by the province of Ontario is spent in maintaining these trails. I don't know what the exact numbers would be, but I suspect there is a huge amount of revenue that the province gets from snowmobilers, through either the gas tax in particular or through sales taxes or through a number of other places, that are not being reinvested, particularly in the northern Ontario experience where we, as I say, have huge kilometres—I don't know what the word is. Is it mileage? What is it if it's kilometres of trails?

**Mr Spina:** Kilometrage, I guess.

**Mr Brown:** Kilometrage, I guess, to maintain. While the government, starting back in the early 1990s, has provided some funding, particularly for buying groomers and that sort of thing, it really doesn't recognize the reality that volunteers are the people who are doing all the work in maintaining these trails. I think Mr Spina would agree, and probably Mr Christopherson, that there is some conflict between the business interests in maintaining these trails and the volunteers who come from the clubs that are maintaining the trails.

**1250**

Through my travels, I sometimes hear from volunteers, "Why should we be encouraging all these people from other places to come to our area when it just means more time and work for the groomers, for us?" I think we have to understand that would be a normal human reaction to the fact that they in no way benefit directly as volunteers from the work on the trails. However, the business community, to their credit, has been very helpful to many of the clubs in helping sponsor them. I know that's the case in Wawa.

We still have a major problem. If we want to build this into a major industry, we're going to have to address some of these problems as legislators in a more meaningful way than this. There are some major issues that I hope we hear from during the committee hearings.

Thank you, Mr Chair.

**The Chair:** Mr Christopherson?

**Mr Christopherson:** Thank you very much, Mr Chair. I appreciate the opportunity to participate.

I am sure the residents in Kenora will know that Howard Hampton, who is the leader of our party and was a cabinet minister in the previous government, in the early 1990s, played a significant role in making the first \$20-million investment in the kinds of trails that we're now all so very proud of. I can remember as a southern Ontario MPP the number of eyebrows that were raised at the notion of \$20 million being spent on snowmobile trails. It took a real education to get everybody up to speed on the economic benefit to not only northern Ontario but all of Ontario by virtue of the exponentially growing snowmobiling recreational activities.

I'm here to put on the record concerns that my leader, Howard Hampton, who is also the local member here, has with regard to this. He apologizes for not being here; he's out of the country and unable to attend. But I would like to put on the record a number of concerns.

It's already been mentioned by Mr Spina that they're going to look at some exemption for traditional users.



But if I heard correctly, it sounded like, again, much of this is going to happen in the form of regulations, as well as a number of other items that Mr Spina has said there will be amendments to, and they're going to come in regulations.

One of the concerns we have is that an awful lot of this bill won't really be seen until the regulations are done, which is, of course, after the legislation has already been passed in the Ontario Legislature, where the public gets an opportunity to see what's going on and hear what's being said, and is being downloaded, if you would, or deferred to regulations, which take place in the cabinet room, which by tradition are secret. We have real concerns that a lot of the important aspects of this bill are going to happen behind closed doors rather than on the floor of the Legislature where the public will have an opportunity to see for themselves what the law is that will affect them.

We have some concerns about how the bill is going to be enforced. Will there be any involvement of the OPP and, if so, do they have the staff to enforce such bills? I would imagine there are probably some concerns from the OPPA as enforcement grows; that would be the Ontario Provincial Police Association, the union that represents the OPP officers. I would think—I don't know this directly, but I would assume—they would have some concerns about the growing area of enforcement that traditionally is their responsibility. I would think they would have something to say about this. Will there be further powers necessary to the OFSC in order to have them complete the enforcement that they are apparently going to be doing under this bill? The whole concern is about that enforcement mechanism and who's doing it, and are we losing good-paying jobs once again to volunteerism and eroding the value of police officers and, quite frankly, their rights under their collective agreement?

We'd be interested in hearing more discussion, and hopefully it will come out—through you, Chair, to Mr Spina—during the course of the hearings about what work has been done with regard to reciprocity agreements with Manitoba, Minnesota and possibly even North Dakota. Again, their permits, as I understand it, are very much cheaper, and we may have people who decide they are not going to come to Ontario, and certainly they are not going to stay here, because it's not worth it to them when they can stay in their own jurisdiction and pay much less. Are we looking, as a province, at having reciprocity agreements with these other jurisdictions and, if so, is that going to be regulation again or will we get an opportunity as members of the Legislature to debate it on the floor of the Legislature?

There is also the question of whether or not people will be permitted to take out weekend passes or day passes. Again, the \$175 that's being suggested can be pretty hefty for a lot of folks.

**Mr Spina:** That's an incorrect figure.

**Mr Christopherson:** So \$175 is incorrect? What's the correct one?

**Mr Spina:** The annual permit is \$150.

**Mr Christopherson:** OK. It's still hefty, especially by comparison to the other jurisdictions.

**Mr Spina:** We won't debate it now.

**Mr Christopherson:** Hopefully we will debate it, though, in public. That's what matters.

**Mr Spina:** Yes.

**Mr Christopherson:** There's the whole question of the crown lands. If you take a look at some of the people who already made submissions to us, and certainly Howard has raised concerns about what happens with crown lands, are they going to be included in this in terms of the fees being affected by that? As we read it, they probably are, and there are real concerns about that. If not, then let's hear that.

One thing hasn't been mentioned, and it may be somewhat controversial, but the fact is that a lot of the businesses that Mr Brown referred to are going to benefit from these trails. We'd be interested to know whether the government has any intention of seeing that any of the businesses that are benefiting will be making any kind of contribution toward the upkeep of the trails which are benefiting them on the business side, or is it all going to fall on the part of the users?

That's just a short list; I know time is short. There are other issues, and I'll raise those as they come up. Certainly I would hope the parliamentary assistant would take note of these particular issues and try to address them during the course of our discussions.

**The Chair:** Thank you to all three members. It wasn't expected, but it's certainly not inappropriate or unprecedented that we'd have a chance to put this on the record.

I want to say to the members who might be serving on a committee for the first time where we're dealing with a first reading hearing—I know Ms Bountrogianni was with us in the mental health act, in Brian's Law—that I would encourage all of you to reflect on the ability to hear the submissions with perhaps less of a dogmatic position taken by any of the three parties. I think we have found far more common ground in first reading hearings than we've ever found on second reading. I know some of the members are subbing in, and I'm sure they will experience a similar phenomenon this time around with that.

#### ONTARIO FUR MANAGERS FEDERATION, NORTHWEST DIVISION

**The Chair:** I apologize for the 10-minute delay, but perhaps we could call forward the representatives from the Ontario Fur Managers Federation, northwest region. Good afternoon. Welcome to the committee.

**Mr Ernie Leschied:** Good afternoon. I'm delighted and impressed to see all these members of Parliament from southern Ontario. We'd certainly like to welcome you to this part of the country. I'm sure most of you in your travels are surprised how far it actually is to come to Red Lake.



The other thing you might note is that I predate the modern snowmobile era just a little bit. I was already an adult when these fancy machines came into existence. I've seen the development of the snowmobile industry from back in the days when you had a 25-mile-an-hour unit to one that goes 100 miles an hour. Of course, in the early days we didn't worry too much about making trails because the only place you could really go was someplace on a road that a logging company had developed or, growing up on the farm, the trails were already there.

As indicated earlier on, I represent the Ontario Fur Managers Federation. For the sake of my presentation this afternoon, I will be referring to us as "trappers." I'm sure you folks can appreciate that that term has been in a lot of correspondence that has gone to various members of the government.

1300

In the past six months we've seen a lot of information moving back and forth and faxes coming in regarding this Bill 101. When it first was brought forward, we made fairly strong representation that we wanted to be involved in some kind of personal discussion. I'm happy that even though we missed the first reading, we can still do this today. I think it's significant that you folks chose to come up to the far west of the province where we certainly have considerably different circumstances for snowmobiling. Building trails in this part of the world is an extremely expensive venture, and once you have the trail built, then you need a day's pay to fill up your snowmobile before you go anywhere. Of course you all know that snowmobiles are not the most efficient units around.

The concern that the trappers' federation has is that many of the trails that are now being used for the snowmobile clubs, and I can vouch for this because I have used the provincial trails—in principle, the Ontario trappers' federation has no problem with some sort of a user-pay system. It had been a voluntary procedure in the past. It probably didn't always work, but in a year when you had less snow and good trails, people were prepared to buy permits to go out and travel on the trails. But a number of these trails originally were trapping trails. Many of the trails in this part of the country are also on old logging roads. So in a sense we northerners have already paid substantial taxes in one form or another to get these trails up and going. Now, I realize that the grooming equipment is expensive and trails need to be groomed.

The position the trappers' federation is taking is that we have already paid a trapping licence fee. We were one of the first organizations to enter into an agreement with natural resources, with the government, to look after our own industry. We have just about finished the first five-year term and are ready to renegotiate, and it has been working very well. So when this came out regarding the mandatory trail permits, of course, it created considerable concern for us.

We realize that trappers by their nature tend to be somewhat independent. We realize that we're in an industry that is not what you'd call financially flush, but

it's dear to the hearts of many northerners. We weren't all that excited when the snowmobile industry took off to the extent where suddenly our trapping trails became main thoroughfares for noisy equipment, which then disturbed the habitat in which we were operating. I was pleased to hear in the opening comments from some of the gentlemen that serious consideration has already been given to some sort of exemption or a sticker for the trappers.

In our recent deliberations at the executive level, the feeling was that the trappers are not necessarily looking for a blanket exemption. I trap around and north of Red Lake. Of course roads are very limited up there and trails are also very limited. Most of the trails out and about have been developed by trappers and ice fishermen and so on. We feel that if we are operating in what we would consider our normal trapping area with some type of sticker—and I don't think it should be a sticker that's just obtained by going in and saying, "I'm a trapper, give me a sticker for my machine"—we certainly would want the trapper to be a bona fide, verified trapper, one who uses a large part of his energy and his snowmobile activities for harvesting and managing fur.

Incidentally, you might be interested to know that trappers are involved in larger management for the province with some of the resources involving winter activities. You might be interested to know that on my particular trapline I have one of those exotic, charismatic animals called the caribou, and we have lots of opportunity to view them. We've had ministry people come in to our trapline. They come over our trail—we have no problem with that—and study them.

We certainly would be interested to see how this further develops. I'm sure some of you folks have some questions that perhaps I can answer for you. I know that Mr Noseworthy and Mr Monk have sent out considerable paperwork, and you will be meeting up with people from the federation at each of your hearings. Again, I appreciate the fact that you did decide to have Kenora as your first location. Also, I appreciate the good representation from our elected officials. With that, if there are any questions, perhaps we could have a little discussion that way.

**The Chair:** Thank you very much for your comments so far. That leaves us about three and a half minutes per caucus. We'll start with the Liberals.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Good afternoon, sir. It's great to be in northern Ontario.

You mentioned that the trappers aren't saying they want total exemption. Have you discussed what would be reasonable, and how would this act in total be or not be a deterrent in your industry unless that partial exemption took place?

**Mr Leschied:** In the past we had a voluntary system for purchasing trail permits. A number of people do that; I have done that. I really don't use trails that much so for me it's not a big issue, but I do know that a number of trappers have to go on what is called the official trail, which was their trail, and they don't feel that any amount



really should be considered. If they're cruising on the larger trail activity, then I think it would be up to them. A lot of trappers, incidentally, do belong to the snowmobile clubs. Does that answer your question?

**Mrs Bountrogianni:** Yes.

**Mr Brown:** I haven't been to Kenora for almost two weeks. I was up at Red Deer Lake just a couple of weekends ago, during the bass tournament actually.

I think Marie has asked the right question: how would we sort this out? Certainly we believe that trappers, as one group, should have exemption in some way, but you make the point too that if they're out using the federation's trails for other things all the time, they probably should be paying for the trail. If I understand your suggestion, you would have some special sticker that would indicate in the area of your trapline that you have some exemption? Is that the right take on what you're saying?

**Mr Leschied:** I think we would have to take it on to a regional basis. It would be very difficult to be trapline-specific. Let's say in my particular case, anything north of Ear Falls would be considered an area that could be part of my trapping activities, whether I'm trapping on my own line or I'm assisting another trapper. I think that's sort of what we would have to look at, breaking it down into regions.

**Mr Brown:** I take it, at least in my area and I presume here, that you would have good relationships with the local federation. A lot of members of your organization would also be snowmobilers and active in the federation. Do you think you could come to some kind of local compromises that would work this out in the local area, if the snowmobile club and yourselves could work out what the areas are? I'm always concerned when government decides they're going to figure it out for you.

1310

**Mr Leschied:** In the past we've had an excellent working relationship with the snowmobile clubs in general. I would say that, from past experience, the local clubs have not put undue pressure on the trappers to obtain permits. They're encouraged, and as members of a club a lot of the trappers voluntarily buy trail permits.

**Mr Brown:** Thank you.

**Mr Christopherson:** Thank you very much for your presentation. Before I return to this issue, because I think it's probably the crux of what you're raising, do I understand correctly that the overall idea of mandatory permits is one your association agrees with in general?

**Mr Leschied:** I think the volunteer system would still be the best, but I realize from past experience that isn't always attainable. Certainly, living in Kenora—and any of you folks who have read the newspapers over last winter's activity realize it's been a very difficult situation to handle on a voluntary basis.

**Mr Christopherson:** Is it fair to say that safety on the trails would be important for trappers who are earning their living there? You say they're coming close to your traplines. I would think that would be a concern, trying to bring some kind of greater safety for individuals using

the machines, but also anyone else who may be on the trail with them.

**Mr Leschied:** As far as safety is concerned, I think most snowmobile clubs put considerable emphasis on that. However, we know that you can be going down the trail, and if you're not on the right side of a corner when someone else is coming from the other direction, it becomes just as serious and critical as on the highway because of the speeds involved.

Three years ago, when we had the last reasonable winter for snow, after the trapping season my wife and I took a trip from Red Lake down to Emo, which was two days down and two days back, 1,100 kilometres. It was a delightful trip. I bought one permit for my machine and anybody who would have argued about my wife not having a machine would probably have had a winter bear on their hands.

**Mr Christopherson:** You raised, of course, the importance of exemptions for trappers and other traditional users. Obviously, you've heard the opening remarks. Howard feels very strongly about this issue. I was curious; you mentioned that trapline-specific may not be a way to go. The first thing would be, how many trappers and traplines would there be within, say, an hour's drive or two hours' drive of Kenora?

**Mr Leschied:** I wouldn't have the immediate figures. I think some of the gentlemen giving presentations later on will. But you must understand that the entire country is divided up in traplines, other than private lands. The First Nations people have trapping grounds that are not accessible by snowmobile trails at all, other than some they may have built on their own. But any of the trapping areas on either side of Highway 17 have commercial trails and also are being used by the local trappers to access their traplines.

**Mr Christopherson:** Is there much worry at all that if you went by region, if you broke it down regionally, you might still have some individual trappers who are being dealt with unfairly because they use such a small part of the federation's trails? Or do you think that number is so small that you're OK going with the region?

**Mr Leschied:** I tend to agree with Mr Brown that some of that administration stuff could be handled on a local basis. There is always communication between the resource users and the recreational snowmobilers.

**Mr Dunlop:** A quick question to you: I'm just curious on the percentage of trappers who actually would use snowmobiles today.

**Mr Leschied:** Who use commercial trails?

**Mr Dunlop:** Who actually would trap using snowmobiles.

**Mr Leschied:** I think that most every trapper uses a snowmobile to trap. One of the things that does happen is that very often it's a man-and-wife team or a man and wife with teenagers. An active trapper could be out about five days out of seven all winter long. Some of us put on 5,000 or more kilometres in one winter in trapping activity.

**Mr Spina:** Ernie, thanks for coming, because this is a good opportunity. You said you appreciated the fact that



we came up here. We felt as a subcommittee that this was an important place to begin the public input on Bill 101.

As the Chair said, this is after first reading, so there is a far broader scope for a debate on this bill, when it gets back to the Legislature, with the input that we receive from these hearings and from the people who are making delegations to this public hearing process.

Ernie, you indicated about the sticker ID and I just wanted to do a quick read. Section 9 of the bill says that regulation-making powers provide for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or regulations. Regulations may also be made general or particular, and different classes of persons may be identified for exemptions from the act or regulations.

That's part of what's in the bill now and that's the message we wanted to drive home. The bill empowers the process to create classes of snowmobile users and, in addition, it authorizes that certain of those classes may be, for whatever reason, exempt. I am suggesting to you that maybe the words aren't exactly—and we'll look at that when we go into clause-by-clause, but the intention is certainly there to look at the traditional users of the system.

I was interested in your suggestion, because this was very much around some of the discussion that took place after getting some on the input on the original discussion paper, and it was using a sticker that would identify a trapper, for example, within a certain territory. I guess I'm really capitalizing on the comments of Mr Christopher and the others. A trapper is licensed for a certain area. Is that correct?

**Mr Leschied:** Correct.

**Mr Spina:** If an exemption sticker were issued that identified that particular trapper's territory so that he or she would be exempt within that territory, would that work? If they're outside that territory, of course, then they would be having to get a full permit. Would that work, if the trapper had an exemption sticker within their trapping territory?

**Mr Leschied:** Mr Spina, I'm afraid that would be rather difficult, because there are people who would be getting on their machines from the edges of any town and would have to go out, say, 20, 30 or 40 kilometres before they get to their trapline area. What I'm saying is, a larger radius that may include a number of other traplines but would be basically in the area where that trapper normally operates. When I spoke about an area or a region, it would certainly have to be more than just the particular trapline area.

1320

**Mr Spina:** You indicated that in your case, for example—and I'm just trying to hone in a little bit for a better understanding—you trap pretty well north of Ear Falls and then out from the Red Lake area, right?

**Mr Leschied:** Mm-hmm.

**Mr Spina:** If your exemption was somehow described as Ear Falls north, would that be sufficient for the trapper?

**Mr Leschied:** I believe that an area that large certainly would meet a lot of the requirements of the trapper.

**Mr Spina:** So if that snowmobiler is found somewhere down around Dryden and Kenora or Ignace, they should have a full permit. Is that the understanding?

**Mr Leschied:** I think encouragement to have a voluntary permit would be in place.

**Mr Spina:** What do you mean by a voluntary permit?

**Mr Leschied:** I guess I'm still wrestling with the fact that when it becomes law, somehow it becomes a blanket thing and there aren't any individual choices left any more. As far as that particular year, the winter was almost over when we decided to make this long journey. We knew what the rumblings had been out on the trail so we bought a permit for the one machine on a voluntary basis. Had we been forced to buy some trail permits, I doubt whether we would have made that trip.

**The Chair:** Thank you, Mr Spina. We've gone over our time.

Thank you very much for starting off our hearings. We appreciate your taking the time to appear before us here today.

#### ONTARIO FEDERATION OF ANGLERS AND HUNTERS, ZONE A

**The Chair:** Our next group is the Ontario Federation of Anglers and Hunters, Zone A. Mr Sidney, good afternoon and welcome to the committee.

**Mr Darrel Sidney:** Good afternoon, committee members, ladies and gentlemen. My name is Darrel Sidney. I was born and raised in Dryden. I've been involved in tourism and natural resource use and management all my life. I'm currently a commercial bait fish dealer, a trapper, an outfitter. I'm a member of the Dryden Conservation Club executive and the OFAH Zone A executive. I'm also a member of the Dryden Recreation Commission for the town of Dryden.

I'm here today on behalf of Zone A, Ontario Federation of Anglers and Hunters. Zone A is an area that stretches from between English River and Upsala, west to the Manitoba border. It starts at the US border in the south and goes up to James and Hudson Bay in the north. So we represent a big area in actual size, in land mass.

Right now Zone A has over 2,600 members, some from almost every community in the northwest, representing a broad spectrum of citizens from trappers, commercial fishermen, outfitters, tourist operators, loggers and forestry workers, miners, cottage owners, naturalists, recreationalists, hunters, fishermen and snow machine riders.

First, I'd like to say that our organization is extremely disappointed and very concerned with the very limited number of public forums concerning this issue. Almost all the members feel that there should have been several more forums, especially in the north where current meetings are so far apart, thus making it impossible for many citizens to attend, to take part and to voice their



opinions. We feel that's a basic premise of procedure in the democratic society that we have.

We're also concerned over the lack of response to the numerous letters sent by OFAH head office, our Zone A secretary and several of our supporting clubs and affiliates to the minister and his assistants regarding this proposal.

We're also very concerned that an exorbitant fee structure such as the current \$150 per machine per year is nothing more than a tax grab, one that will put a financial burden on many lower-income snowmobilers. Many will find that the cost of the trail permit will exceed the value of their sled. It's not so much down in the south, but I can say that up here an old snow machine in somebody's yard always invariably gets fixed up and is used to run the next winter. You can travel through Dryden, Kenora, Red Lake, Sioux Lookout—I do regularly—and it's not uncommon to see a really nice sled and right beside it a clunker that came right out of the 1950s. In fact, that's what I'm currently driving, one of the first machines ever made, a Snow Bug. One of the other machines I have is a Husky. These are old clunkers. They run. They are not worth anything financially, probably, but they get me around my trapline, they get me around my bait fish block. That's what I use them for.

We're worried that some of the people who can least afford to pay the trail permits will take the money for the trail permit from their food and clothing budgets for their kids, just to make sure that father or mother can go on the trail. That is a concern, and with some of the lower-income families up in this area, that is a big concern.

That leads to, where will the money generated from the permits go? We would like to find out exactly where this is designated or earmarked for before it comes into law.

Another question we have is, what happens to the people who get charged for not having a permit while on a designated trail? Will they further backlog our court system? Will repeat offenders be placed in our already overcrowded and underfunded penal system?

Of course, these questions lead to, who will pay for this aspect of the proposal? Who will pay for the monitoring of the trail wardens? Who will pay for their training and the equipment required to carry out this mandate? Right now I understand it's done by volunteers, but once a few of the snow machines get damaged or something, or you get some idiot who gets picked up, gets mad and comes back and vandalizes a snow machine, eventually insurance companies are going to come back on the individual and say, "Hey, no more trail warden stuff, because these guys are going to come back on you. We're not going to insure you." Now we're going to end up having to buy equipment for these trail wardens. Are we going to use the OPP? Are we going to use MNR staff? Who are these people? Where are they being trained? Who is training them? That's a big, important question.

We're concerned that the snowmobile trail permit fee is only the first step in a long list of fees that will be

forthcoming: one to use ATV trails, one to use canoe routes, one to use the abandoned logging and mining trails and roads, one to use cross-country ski trails. The list could go on and on.

Considering the MNR's current position of multi-use of as much of our crown lands and natural resources as possible, could this proposed legislation lead to a change in policy direction, one that could see crown lands divided up into areas for exclusive use by special-interest segments of Ontario society? Our organization will continue to vigorously oppose any further exclusive use or privatization policies of our crown lands. Very few of these trails up in the northwest are on private land and we feel crown land should be multi-use availability.

Most tourist operators feel that the current \$150 to \$180 trail fee is a huge detriment to tourism in our area. I must caution you here, folks—and I'm not being smart—that southern Ontario tourism and northwestern Ontario tourism are two completely different stories. I was quite involved with the spring bear hunt cancellation. When you go down there and talk to the outfitters, there is such a difference in their tourism base compared to our tourism base. We're not in the same park at all. They're playing football and we're playing handball. There is just no comparison at all. Tourism in south-central Ontario comes from southern Ontario primarily, whereas 99% of the tourism up here comes from the US. Very little comes from southern Ontario. So it's a completely different story.

Most winter tourists in this area come to northwestern Ontario to fish, not to ride the limited trail system. When they find they have to pay to use the trail to access their favourite remote fishing lake, they go back into Manitoba or the States. All the resort operators I have talked to feel that this move will reduce the number of winter tourists coming into northwestern Ontario.

I have been told by current and past members of the Dryden Snowmobile Club that the \$150 trail permit fee has hurt the club. Many to most of the club members feel that it's too high and that the general sledding public is blaming individual clubs and their members for the fee. So these people have tended to leave the club and they're trying to avoid riding on the trails. They feel they have been made scapegoats in this whole scenario, this process of getting the \$150 trail permit in place etc.

#### 1330

Zone A members have talked to many area residents, and 99% of the area residents say no to the current trail fees. They do not want them. At our Zone A meeting in Fort Frances only a few days ago, it was unanimous that we oppose Bill 101 and the current trail fee structure and rationale pushing it, as we feel it is seriously flawed and unworkable as it currently stands.

Current groomed trails often follow abandoned logging and mining roads, sometimes trails cut and maintained by trappers and fishermen. Is it fair to now exclude the people who originally made these trails from continuing to use them unless they pay a fee? I must say here that I wasn't aware of the complete bill. I have not



had time to read it because I'm extremely active in summer with my business, so I haven't had time to read everything. I was happy to hear that there might be potential, and I emphasize the word "potential," for some exclusions or exemptions to the trail fee permit, but I will have questions about that to find out what they are.

Another concern we have is, will the trail permit system create dangerous situations on our secondary roads and highways? How many people will start to drive their sleds on the travelled portions of roadways to get to their destination rather than pay the \$150 trail permit fee, thus making it more hazardous for the automobile motoring public? We've had people who have said that if they're forced to pay a permit fee to ride on the trails, to heck with it; they'll ride on the roadsides. Then invariably what happens is that the roadsides get pretty rough and pretty soon they're sneaking up right on the shoulders, and pretty soon they're on the travelled portion. We do see them up here quite a bit more regularly, I would expect, than anywhere in southern or even central northern Ontario.

We feel that socially, Bill 101 and the current trail fee structure is a disaster. It has increased the financial burden on lower-income families, it has reduced tourism in northwestern Ontario and has a potential to further negatively impact tourism. It has created hard feelings toward many diehard snowmobile enthusiasts.

Economically, it has the potential to cost people in the north through reduced tourism income, which could lead to job loss, through higher costs to participate in outdoor winter recreational activities and through the higher costs for resource extraction. I'm talking about costs for a trapper to run his trapline, a bait fisherman to obtain his minerals etc.

Environmentally, it has the potential to increase the impact on wildlife and the natural environment. Trappers, miners and fishermen who are excluded from using these regulated trails, people who do not want to pay the fee, may start to construct other trails, and that should be a valid concern. Also, heavier usage of specific trails might have a detrimental impact on the wildlife near the trails. I think that has been found to be true in Yellowstone park just in the last two winters, when they've done extensive studies on it and found that they're really seriously harming the wildlife that normally would be along the areas where their main snow machine trails are.

You mentioned significant safety and enforcement enhancements. We would like to find out what they would be. I think it is in everybody's interests to make that more public.

Exempting hunters or trappers or certain classes of people who may be exempted: I'm not sure; I would like to find out who, how, why they would be exempt, what the conditions are for their exemptions. I'd like to go back to when you were talking to Mr Leschied. I know a trapper who has a trapline in my bait fish block northeast of Kenora here. He travels 150 to 180 kilometres each way to get to the far reaches of his trapline. You could say, "Well, we'll give you a radius of 50 or 80 kilo-

metres." Is that enough for everybody? Will that mean we all have to be given special exemption permits, or how are they going to do this? Do we use it as blanket coverage? How will this work?

Up here, safety is not yet the factor and the concern that you have in the south. Obviously, we have many fewer riders. I can see that's a valid concern, and I do agree with it. I think everybody is in agreement with anything that will enhance safety.

In conclusion, the members of Zone A of the Ontario Federation of Anglers and Hunters would like to have more consultation and involvement in the process and more public awareness forums so the majority of the public's opinion can be heard. We would like to see traditional trail user relief from permit fees that may be charged to the recreational trail rider. What we're saying here is that we have nothing against having a fee for somebody who is going to ride the trails. I agree with that. If I was going to take a trip from Dryden to Fort Frances or Dryden to Kenora—make the loop around northwestern Ontario—I agree. I'm on a groomed trail; it's a lot nicer for me. I should be paying a fee to go on them, the same as any other user. Everybody at our meeting agreed with that.

We would like the government to show us where the money generated from any trail user fees is going, before inception of the program and as long as monies are being generated from the trail permits, if this is instituted. We would also like to see the multitude of questions regarding this proposal answered before the proposal is rammed through the government and made into law.

Thank you for your time. Any questions? I don't know if I can answer them, but I'll try my best.

**The Chair:** Thank you very much for your presentation. We've got about four and a half minutes, so about a minute and a half per caucus. This time we'll start with Mr Christopherson.

**Mr Christopherson:** Thank you for your presentation, Mr Sidney. As I think you heard in the opening remarks, Howard Hampton and I have some real concerns about the amount of changes and details that will find their way into regulations. I know the parliamentary assistant read out section 9 and the subsections, including (2.2), that talk about how regulations can be made that would deal with exemptions etc, but your last comment was about wanting to see everything before it's rammed through. The way it's being framed now, it will be rammed through and then all these details will show up in the regulations, where you won't partake in or even be able to watch or listen to the discussion.

I think this is probably the beginning of a number of presenters who are going to raise concerns that need to be addressed, and so far—this may change as it goes on—a lot of the answer is going to be, "Don't worry. We've provided for regulations that can allow us to address that." That's really not sufficient, certainly based on what you are suggesting and, I think, what others, and certainly Howard, are concerned about.

So I would emphasize again to the government that if you want this process to work whereby we go after first



reading and everybody sort of works together and there is less partisanship, then right at the outset, from the opening comments from the member for this area, Howard Hampton, to the presenters we are hearing, exemptions are a huge issue, and to just say, "Don't worry about it. Trust us. We're the government; we'll do it in cabinet," is not going to be sufficient. I think there needs to be a shifting of the minds on the part of the government to recognize they are going to have to bring these details to the committee and incorporate them into the bill. If there need to be subsequent changes, perhaps you can look at a regulatory framework then, but I think you are going to find that to say that all the details will come out after the bill has been passed is not going to meet the needs of the presenters.

**The Chair:** Thank you, Mr Christopherson.

Not to intrude and lose my neutrality here, but I want to bring to your attention, Mr Sidney's and others' that in fact when we did the franchise act after first reading, we made a commitment to include your colleague, Tony Martin, in the actual preparation of the regulations. So in addition to holding precedence just in the very fact that these hearings take place after first reading instead of second reading, we have as part of that allowed the opposition parties a far greater role in a number of these bills. Perhaps this would be another appropriate opportunity to guarantee that the positions taken in committee make their way through in all aspects. I just wanted you to know, because you weren't on the committee for that bill.

**Mr Christopherson:** I appreciate that, Chair, and I would just comment that that would probably go a long way to satisfying the opposition parties. I doubt in this case, because exemptions and other matters are so crucial to the presentations, that saying, "You really don't have to worry about it, because more politicians will be a part of this," is going to satisfy the presenters. But I appreciate your clarification.

**The Chair:** At least we have it on the record that you don't consider yourself more trustworthy.

Mr O'Toole.

**Mr John O'Toole (Durham):** Mr Sidney, I think you've brought to light some very technical concerns, and I appreciate that. I think the issues of age of machine and trapping and other functional working relationships are duly noted and will be noted in some of the correspondence. I would say I have seen the correspondence; most members of the committee have seen the correspondence. I don't think there is a position, from where I stand—perhaps Mr Spina will respond—to say definitively, "The answers to your questions are these." We're here to listen.

Are you a member of the federation today?

**Mr Sidney:** Yes, I am.

1340

**Mr O'Toole:** Members like yourself who are leaders, not just in the OFAH but in other senses, I think will do the right thing. Because you've admitted that the trail system itself—I'm not trying to corner you or anything;

I'm just saying these are certainly an upgrade from driving around in the forest or on the lake. To have a groomed trail at your disposal is to get the right people to do the right thing. Do you think it would be a good move to allow the clubs to sort of arbitrarily—there is that empowerment in this section to authorize the clubs to administer some of the regulatory and enforcement issues, meaning who the exemptions—

**Mr Sidney:** We've got a good strong club base, many clubs where there are active members, where the club members participate in various other functions throughout the area; eg, you've got some club members who are trappers and some who are bay fishermen, some who are outfitters, whatever. Perhaps that would work. But when you've got a small club base—let's say we have a club that maybe has 15 to 20 members only—what are we going to do? Are those 15 to 20 members—let's say the trappers' association that might have—in Kenora I'm sure there's 80, maybe 90 trappers; in Dryden I think it's over 65, around 65—are those 20 members going to be able to tell 5,000 people who can and who can't be exempted? That becomes a problem there when you go on a club basis, we feel.

**Mr O'Toole:** Mr Spina may have a couple of points.

**The Chair:** I'm afraid we don't have time. We'll just go around.

**Mr Brown:** Thank you for your presentation. Could I just get some quick clarification? Obviously, Zone A is opposed to this.

**Mr Sidney:** As it stands, we are not opposed to a fee in general for recreational trail riders. Please make sure that you note that wording, "recreational trail riders." People who use the trails for their traditional means to access Oak Lake, north of Kenora, or Wabigoon Lake, south of Dryden, if they're going to fish, then they shouldn't, we feel, be paying a trail fee permit of \$150.

**Mr Brown:** Could you tell me, is this the position of the OFAH in the province?

**Mr Sidney:** I would believe that is the position of the OFAH in the province but I am not here on their behalf, please understand that.

**Mr Brown:** No, I understand that. I just—

**Mr Sidney:** I'm not speaking for them but I believe that is their position as well. But definitely our position is that we do agree with the trail permit fee for recreational trail users.

**Mr Brown:** So the problem is defining recreational trail users, I suspect.

**Mr Sidney:** In most cases, the trappers go on the trail to access their trapline or a trapline they're assisting on. We're not going to drive from Red Lake down to Emo and say we should be free. And he didn't; he paid for it. He said he paid for the one, at least. So he understands that. Hey, he's using it as a recreational activity so he should pay for it. We agree with that.

But for me to go to my trapline—let's say I lived in Kenora and accessed my trapline at Oak Lake and I used 25 to 50 miles of current trail that I've used for 35 or 40 years. Why should I be paying a fee? I possibly made



that trail. And there are trails in the Dryden area that I did personally make.

**Mr Brown:** My constituency's the same way. I'm hearing the same things.

**The Chair:** Thank you very much, Mr Sidney. We appreciate coming and making your presentation here.

**Mr Sidney:** Thank you for allowing us to have our voice.

**The Chair:** Any time.

#### PENNY TODD

**The Chair (Mr Steve Gilchrist):** Our next presentation is from Ms Penny Todd and organized snowmobilers. Good afternoon and welcome to the committee. We have 20 minutes for your presentation.

**Ms Penny Todd:** I'm sorry I missed the opening remarks; I'm sure they were very interesting.

Mr Chairman, honourable committee members, the article in the local Kenora Enterprise newspaper mentioned that only the Ontario Federation of Snowmobile Clubs was formally consulted in the process of drafting up the snowmobile legislation. And it further mentions that other players in the equation were feeling slighted, hence these hearings.

My name is Penny Todd and I am here today to represent avid recreational snowmobilers who may or may not have trail permits purchased from the local snowmobile club and who are, for one reason or another, at odds with the Ontario Federation of Snowmobile Clubs in particular and organized snowmobiling in general.

Snowmobiling, particularly in this part of the country, has been going on for some time. My husband has been an avid snowmobiler for 30 years and can remember the time of the first snowmobiles in this area, even some homebuilt ones.

In the explanatory notes on the amendments to Bill 101, the first point says that the amendments "provide that a motorized snow vehicle cannot be driven on a class of trail that is designated by regulation except under the authority of a trail permit." I guess this then means that if I'm riding my snowmobile on a trail that is not designated, I do not have to have a trail permit. Does "designated" mean owned and/or maintained and/or regulated by the Ontario Federation of Snowmobile Clubs or any one of its members or representatives? Can a trail be designated to someone else?

The second sentence in point 1 of your explanatory notes states that the amendment "allows the Minister of Transportation to authorize any person to issue trail permits and to retain the required fee." This would be something tourist operators might want to take a close look at.

Point 6 of the explanatory notes says, "The current act allows the minister to delegate to any person the issue of permits and motorized snow vehicle operator's licences." Is the second sentence, "The bill also allows the minister to delegate to any person the issue of trail permits," currently in the act or is it an amendment? If I form a

club not associated with the Ontario Federation of Snowmobile Clubs and I set up a network of trails and I agree to maintain them, can I apply to the government to collect a permit fee for their usage and can I keep the fees collected for my own use?

The Honourable Cameron Jackson, Minister of Tourism, in his address to the House on June 20, 2000, stated that he was introducing an act to improve the sustainability and safety of Ontario's snowmobile trails. Further, he stated that "a mechanism needs to be developed to ensure that people continue to have access to this recreational activity" now and well "into the future." Ladies and gentlemen, I ask you, how is putting up a barrier that requires users to buy a permit a mechanism to ensure access?

Then he goes on, "...the government is committed to improving the safety of snowmobiling and reducing the snow vehicle fatalities." How is this consistent with the practice of the Ontario Federation of Snowmobile Clubs turning our original three-foot-wide trails that twist and meander through the forests into snowmobile super-highways, 16 feet wide and as straight and flat as possible? I never heard of a fatal collision on one of our small local trails. Recreational snowmobiling is about spending time in the wilderness in the winter with your family and friends. It's about good times and good company. It's not about going as fast as you can to the next stop, usually a restaurant or a motel/hotel with a liquor licence.

The honourable minister uses the word "safety" five—that's five—times in his address to the House. Of course, I kept looking throughout the document for the safety measures. Where are the speed limit restrictions? Where are the signage requirements? Where are the instructions to OFSC or whoever is going to maintain these trails as to the safety standards required in order for a trail to become designated? Where is the mention of increased personnel required for enforcement of these regulations?

The honourable minister further states that the act includes "a mandatory user-pay approach through a permit for users of Ontario Federation of Snowmobile Clubs trails." This may be a good approach for southern Ontario, where I'm sure most of the trails cross private property and/or travel through populated areas, but the approach here in northwestern Ontario—that's everything north and west of Lake Nipissing—needs to be different. Here in northwestern Ontario, the OFSC trail is mainly a thoroughfare connecting the southeast end of the province to the Manitoba border. Here most of the trails are wilderness trails, which may at times intersect with the OFSC trails but mostly try to avoid it.

Tourist outfitters have put a lot of their own trail systems in to get people to their winter destinations, and a lot of the travelling, if not across crown land, is across water. The distances here are mind-boggling. I can travel for a whole day, put over 100 miles on my snowmobile and never cross an OFSC trail. On the other hand, I could go out my back door about three miles as the crow flies and be right at the OFSC trail. Personally, you won't find



me on the OFSC trail if I can help it. I won't risk my life nor my property. But sometimes it's difficult to avoid them when OFSC comes along and takes over existing trails, original trails that my family, friends and neighbours helped to build, develop and maintain, and then they have the gall to charge us to travel on them. OFSC came along and took over part of the trail that I used to use to get to Manitoba and now call it their own and want to charge me to travel on it.

1350

OFSC came along and took over the crosstown corridor, the only route you could use to get from one side of town to the other, and then called it their own and want to charge everyone to use it, and the local municipality lets them get away with it. If OFSC wants to come along and build trails, let them, but don't take over our existing trails and call them their own. I say let OFSC charge anyone they want to use the trail system that they develop, they build and they maintain, but leave existing trails alone.

Some people say that's progress. Well, progress isn't always a good thing. Some of these trails have been in existence for over 30 years, and for the 13 that I have been riding, they have served me well. I say, if it ain't broke, don't fix it. If OFSC wants to contribute to the maintenance of existing trails for free, just like I've been doing for the last 13 years, I won't stop them. I won't even charge them for being on my trails.

As to the minister's statement that "the people who benefit most directly from Ontario's organized snowmobile trails system would contribute to its upkeep," who benefits? Maybe snowmobilers in southeastern Ontario who have no other place to go, but not snowmobilers up here. Up here, locals were travelling across the country for many years before OFSC came into the picture. If we didn't have a trail, we made one, and then the next year we went back and opened it up again.

We don't need OFSC to get tourists here. Manitobans have been coming down here with and on their snowmobiles for many years, long before OFSC existed. In fact, many Manitobans are very angry at their treatment by OFSC officials who were demanding that they pay to travel on a portion of the trail that they had been using for years. We don't need OFSC to get people from the northern states to come up here. My brother-in-law has been guiding American friends up the lake for years, long before OFSC was in existence. Most Americans truck and trailer it up here anyway. Only the most adventurous want to travel so far by snowmobile.

So who benefits? Local motels and hotels, tourist operators, restaurants, gas stations and bars. Maybe the government should be looking at the extra taxes these people are paying due to their increased revenues. Maybe the government should be saying, "Let's make our trails free so that more people will come and we will get more revenues."

The OFSC trail system was originally paid for with tax dollars. Didn't the former NDP government give OFSC some \$14 million in tax dollars to develop the

original trails? The OFSC equipment used to maintain the trails is purchased half and half with tax dollars. Why should the taxpayers of Ontario pay twice for the same thing? Aren't we paying enough? Where is the tax revenue from the additional gasoline sales? Why isn't some of that money being used to maintain the trails? The gas tax is supposed to be used to maintain the highways, isn't it? Aren't snowmobile trails highways for snow vehicles?

What about maintenance? Ask the local OFSC officials how many times they groomed the OFSC trail last year and the year before and the year before that. Was it once, twice, maybe three times? Am I to pay \$180 for three groomings—and that's only me—times how many members? There are 800 locally, they claim. Even if all of them bought memberships before the December deadline and only paid \$150, that's \$120,000; and even if they've exaggerated the numbers and they really only have 400 memberships, that's still \$60,000—\$60,000 to groom the trail three times. That's \$20,000 per time. I thought the trails up to this point were being maintained by volunteers. So what's this money for? Surely it doesn't cost \$20,000 for fuel and oil to groom the trail for a day? Well, we're talking Kenora here, where the gasoline prices are the highest in Canada, higher even than in Newfoundland. Some distinction, eh?

How about the permit? Why is it an automatic membership in OFSC? Is it a permit or a membership? They should be two entirely different things. Why can't you permit the person rather than the snowmobile? That way, if my machine breaks down, I would still be legal with a loaner, as long as I was registered, insured and licensed, or I would be able to take one of my antiques out for a cruise once in a while and still be legal. Why would I buy a permit for a machine that I'll only use once or twice a year?

What about the fee? Surely it could be more reasonable. Don't you think \$150 or \$180 is unreasonable?

I'm not a rich person just because I own a snowmobile. Snowmobiling is what I do. I don't have a boat, I don't take winter vacations to exotic places, I don't own a mansion or drive an expensive car; I snowmobile. How about \$35 or \$50, like our neighbouring communities, Manitoba and the northern States? What about reduced fees for visitors, weekly passes or weekend passes? They do that for us. Why wouldn't we reciprocate? Better yet, if someone comes here from Manitoba, and they already have a Manitoba trail permit, they should be able to ride our trails for free and vice versa.

I would like to make the following recommendations to the committee:

(1) I recommend that the government of Ontario allow OFSC to collect permit fees for snowmobile trails they develop, build and maintain; further, that they be cautioned to leave existing trails alone.

(2) I recommend that the government of Ontario investigate as to what portions of the now designated OFSC trails are considered pre-existing and negate the requirement of a trail permit on those portions of the



trails so identified, particularly those portions which cross crown lands and lakes.

(3) I recommend that the government of Ontario set the permit fees at a reasonable and affordable rate, somewhere between \$35 and \$50; and further, that the fee be assigned the snowmobiler rather than the snowmobile.

(4) I recommend that the government of Ontario make the permit just that, a permit, and that a membership in the OFSC be a separate purchase.

(5) I recommend that the government of Ontario permit snowmobilers who want to maintain their own trails on crown land to do so without liability to the government and without the requirement of collecting a permit fee for trail usage.

(6) I recommend that the government of Ontario find ways to encourage tourists to come to Ontario by allowing such measures as a reduction in the permit fee for weekend or short-term visitors and, further, that the fee be collected and retained by the seller.

(7) While recognizing the enhanced enforcement benefits of mandatory trail permits on OFSC-designated trails, I recommend that the government remove any reference to "enhanced safety measures," because there are none contained in the proposed amendments.

I told people that I was coming here to speak to you today. Some of them said, "Why bother? They won't listen to you anyway, and even if they listen, they won't do anything about what you tell them." Are they pessimists or realists? Am I an idealist? I hope not. Just so you know that I'm not speaking just for myself, I bring you the signatures of the people who have asked me to speak on their behalf. This isn't an official petition, but I just wanted you to know that I'm not speaking for myself. I have 192 signatures here and I'd like to present them to you.

I come to you today in good faith: faith that you will take my words into serious consideration; faith that you will take my recommendations forward; faith that you will do what is in the best interests of all of the citizens of Ontario, including this small voice from northwestern Ontario. Thank you.

**The Chair:** Thank you very much for your presentation and for your specific recommendations. That leaves us about four minutes. Dare I presume to think we can each squeeze a quick question in? This time we start with the government ranks, Mr O'Toole.

**Mr O'Toole:** The parliamentary assistant wants to speak. Mr Spina wants to speak.

**Mr Spina:** I'm going to thank you, Penny, because I can tell you that your recommendations, all seven of them, are not far off base with regard to any of the discussions that have gone on; in fact, they're pretty close.

I can appreciate your position being at odds with the OFSC, but as it stands—and I'm not saying it's right or wrong—the federation is the largest single body representing the industry in the province at this point. I don't say that to defend them. When the government's dealing with organizations, you want to try to find a body

that's most representative of that industry, but that doesn't mean you exclude the other people.

The question you brought forward, and a question brought forward also by Darrel earlier, was about where the fees go, where the dollars will go. They would go back into the maintenance of the trail system. That's really where it's always intended. There's not an intention for the government to take any portion of that money.

1400

With regard to the recommendation that they collect permit fees for the trails they develop, they build, they maintain, that's fundamentally what the reason is for this process, that monies that would be collected by the federation and its member clubs would be spent on their trails.

Under the legitimacy of the government operations, the OFSC would not be included specifically in the act as a designated agent, which means that under circumstances which at this point we're still trying to define, there could be other agents who might be permitted. Theoretically, if you presented the case, as you suggested, where you have a large organization with your own trail system and you wanted to collect a fee, at this point I can't say no, and it still might be within the parameters of the whole structure, but realizing that the OFSC is the dominant federation that works within the snowmobile industry.

**Ms Todd:** Could I just make a comment on that?

**Mr Spina:** Yes.

**Ms Todd:** I realize the OFSC is a large body of people and they say they speak for a lot of people, but the reason they have such a large membership is because the permit includes the membership in OFSC. If the permit was \$50 and the membership was \$50, how many members would OFSC actually speak for?

**Mr Spina:** See, the fee—

**The Chair:** Mr Spina, we'll have to make that a rhetorical question.

**Mr Spina:** Thank you, Penny.

**The Chair:** Over to Ms Bountrogianni.

**Mrs Bountrogianni:** That was an excellent presentation. Thank you very much. I'm getting educated by the moment about this issue, even more so than the official documents.

I'm going to take this opportunity very quickly, and in the interests of time, to reiterate some of your excellent questions and to perhaps ask the government side by the end of the hearings, if not today, to have some of these answers. For example, where are you in the process as far as how you are going to address safety? Quite rightly so because I do have the note from June 20, the honourable minister mentioned safety five times. If this money is going back to keeping the trails decent and rideable, how is the safety issue going to be addressed, independent of course of the trails being safer physically? Are there going to be more OPP officers? Right now, things that are done by the volunteers are going to be done by someone else. In other words, do you have any details other than basic rhetoric that it's going to be safer?



I think that was a very important question. It was one of the questions I had earlier which I didn't have an opportunity to ask. I don't know, Mr Chair, if I can have a formal answer by the end of the hearings. Is that possible?

**The Chair:** Normally what would take place, particularly after a first reading, whether it's the deputant or the members proposing those questions, I think in fairness to the parliamentary assistant he would want to get feedback from the ministry on some of the more complex questions. I don't think it's an unreasonable expectation on your part, perhaps not the same day but certainly before the end of the hearings, that we would have the answers to the questions Ms Todd and you are posing.

**Mrs Bountrogianni:** Thank you very much.

**Mr Christopherson:** Thank you very much, Ms Todd. I think the reaction of the citizens who are here is an indication of how well received your presentation was, very thorough, very concise.

**Ms Todd:** Thank you.

**Mr Christopherson:** I want to push it just a little because I was on the same vein as my colleague from Hamilton Mountain—where did he go? Where are you going? Hey, Joe, where are you going?

*Interjection.*

**Mr Christopherson:** That's not going to work.

This is twice now, I think, two presenters have raised it, and I touched on the issue of the safety. Can you point to something in the bill right now that deals with the issue of safety, given that there seems to be so much emphasis on it? Is there something we're all missing? I've gone through it too and I don't see where there's anything that tightens safety regulations.

**Mr Spina:** The elements of safety have to do with the enforcement side of it to make the system safer. That's really what it's mostly about.

By the way, with regard to the regulations, rather than waiting until the bill is passed and then have that process begin, we have begun that process now and we are hoping to have a draft by the time we get to clause-by-clause, so that we can have the opportunity, collectively, to look at the regs.

The other side of it is that there are elements that have never existed in the Motorized Snow Vehicles Act that define things like headlight positioning, reflective materials etc, that are currently not in the Motorized Snow Vehicles Act that will now be updated, because that act has not been changed since 1972 and machines have certainly changed over time.

Those are the elements of safety that they're looking at, as well as the enforcement side, which makes it safer for users on the trail.

**Mr Christopherson:** That, again, speaks to regulations, though. Correct?

**Mr Spina:** Yes.

**Mr Christopherson:** So again I'll put the emphasis—we know we're getting this slowly but surely; I think it's imperative—it's a shame that the regulations aren't here, so the public can comment on the regulations. That really

seems to be where the meat of this thing is. To say, "We'll try to have some regulations before the committee has an opportunity to review it," is still less than what the public is demanding here.

**Mr Spina:** But before we shape it, and that's why we're asking for these people to give their input.

**Mr Christopherson:** Are you planning another opportunity for people to give feedback on those regulations, given that's where the real legislation seems to be?

**Mr Spina:** I'm not planning the legislative process at this point; I'm managing what I can. As you know, we are getting input at these hearings, and it will go back to clause-by-clause for amendments. We are hoping to be able to have some draft regulations to table for all three parties to look at at that point, and then there will be plenty of opportunity for second reading debate, third reading debate if we get that far, and the committee can be recalled for any further amendments, or it could be done in the House.

**Mr Christopherson:** I realize that, but the reason we have this public consultation after first reading is because once we get to second and third readings, positions have pretty much hardened up, particularly government positions, as you well know. I say that about any government, not just yours.

I would emphasize the importance of considering a review, of letting the public comment on those regulations when they come down. Don't just keep it to the politicians only—some mechanism of feedback. There's no massive panic here. If we did reach agreement on what the bill should look like, it's not unusual that we could get agreement—and I say that as one of the House leaders—to fast-track it, if indeed we've given the public an opportunity to comment on those regs. So much of this is going to come down to those regs, and to just put it off to the end and say that politicians will get a crack at it, I think, is going to miss the point of why the committee is out here in the public in the first place. I'll leave that with you.

Thank you again for your presentation. It was very well done.

**The Chair:** Thank you again, Ms Todd, and the 192 people who took the time to sign your petition.

**Ms Todd:** Thank you.

## ONTARIO'S SUNSET COUNTRY TRAVEL ASSOCIATION

**The Chair:** Our next presentation will be from Ontario's Sunset Country Travel Association. I take it you are Mr Cariou. Good afternoon. Welcome to the committee.

**Mr Gerry Cariou:** Thank you for allowing the opportunity for our association to present to this committee on this important bill.

Given that we are a tourism marketing organization promoting the northwestern region of Ontario called Sunset Country, our brief really concentrates on the tourist aspect of this bill and the elements relating to



increasing tourism and some of the problems we've encountered with current regulations in the system—how it is working now.

Although I do agree with many of the points raised by people who have other interests, be it traditional users or non-organized snowmobilers, I'm not going to comment on that in my brief to you.

1410

To give you an idea, Ontario Sunset Country is one of the former NOTAPs once supported by the province of Ontario. As of March 31, we did not receive any more funding from the government. We have been around since 1974. We have approximately 450 members, which includes retail service businesses, municipalities, chambers, economic development organizations, roofed accommodation operators—which would include lodges, resorts, hotels, people like that—who are actively involved in trying to develop a winter tourism industry in northwestern Ontario.

I'm going to read from my brief to allow you to consider these comments. We do support the general intent of the bill and agree that legislation is required to promote snowmobile sustainability and to enhance safety and enforcement of recreational snowmobiling in Ontario. We are looking at snowmobile trails that are currently part of the OFSC system. That's the bulk of what tourists use in our area, so my comments would be in regard to those, as opposed to the smaller winding private trails that may be out there.

The association supports the requirement for mandatory permits for motorized snow vehicles on trails maintained and developed by affiliated clubs of the OFSC. We support the enforcement of the new permit system, if it does become mandatory, by duly authorized police officers or conservation officers.

The association strongly believes that affordable, short-term daily, weekend and weekly permits must be made available to tourists visiting Ontario for the purpose of snowmobiling, so as to ensure that permit fees are not a barrier to our efforts to increase snowmobile-related tourism activity and its associated positive economic impacts, which I think this committee is well aware of.

Ideally, reciprocity with other jurisdictions, be it Manitoba or the northern border states in our area, is an ideal, but is it practical or realistic to expect it to happen? We are suggesting to this committee that if reciprocity is not an option, the following permit fees for short-term visitor fees—these are not seasonal fees—come into these general ranges. This is based on discussions we have with our marketing efforts folks, when we talk to the actual tourists who are interested in coming to northwestern Ontario. This would be at snow shows, over the phone—the inquiries we receive—over the Internet, e-mails and things like that. Single-day permits, \$5 to \$10; three-day weekend permits, \$15 to \$25; seven-day weekly permits, \$35 to \$45.

The association supports the creation of a visitor family permit for the three time periods previously identified. Such a pass would recognize the family-

oriented nature of snowmobiling, and allow for lower fees than the regular visitor passes identified above. The amount of the family permit fee, as well as the maximum number of motorized snow vehicles that could be included in such a permit, should be determined by the Minister of Tourism.

The association recommends that the setting of fees for visitors' trail permits—that is, for non-residents of Ontario—be done by the Minister of Tourism, not by the OFSC. The association supports the retention of both resident and non-resident seasonal and visitor permit revenues by the OFSC and their affiliated clubs to assist them and cover the costs of maintaining trails across the province.

Should it be determined by the OFSC, in conjunction with the Ministry of Tourism, that the recommended visitor permit fees are insufficient to cover costs of maintaining OFSC trails that experience wear and tear as a result of visitor use, then the province of Ontario should seriously consider a direct allocation of funds to the OFSC and their affiliated clubs to offset trail maintenance costs. We believe that snowmobile clubs which are volunteer-based should not be expected to bear the increased financial burden of trail maintenance costs related to an increase in tourism-related activity.

Tax revenues accrued by the province as a result of snowmobile-related tourism expenditures could be used as a source of this funding allocation. Many studies have shown that significant tax revenues to the province have been identified, both provincial studies as well as independent studies by organizations such as the OFSC, I believe.

The province should assist the OFSC and their affiliated clubs to communicate the rationale of why mandatory trail permits are necessary on OFSC trails and to sustain recreational snowmobiling in this province. This assistance should include allocation of funds by the province to the OFSC and their affiliated clubs to offset costs of related marketing and communications activities necessary to inform the public.

Organizations such as Ontario's Sunset Country Travel Association should ensure that in-kind assistance—for example, free advertising space in our tourist publications—is made available to the OFSC and their affiliated clubs in our operating areas to assist them in these communication needs to our member tourism operators and visiting tourists. This could also include acting as authorized permit sales agents for the clubs in our district.

Those benefiting from tourism-related activity—ie private sector businesses such as lodges and resorts—should also consider forms of assistance to affiliated clubs in the area. At a minimum, this should include acting as authorized permit sales agents, and possibly financial contributions to clubs.

It's important for this committee to realize there are regional differences in snowmobile tourism markets across Ontario. These must be recognized in drafting this bill. While northeastern Ontario draws a large part of its



visitor traffic from within the province, primarily southern Ontario, this is not the case in the northwest. The majority of our tourist traffic comes from the provinces of Manitoba and Saskatchewan and the near border states of Minnesota and Wisconsin. These regions have permit prices considerably lower than Ontario's; for example, seasonal visitor passes in Minnesota cost US\$16, and a four-day visitor pass to the province of Manitoba is C\$20.

As an organization which heavily markets tourism to the four areas I mentioned, Sunset Country knows firsthand the major barriers which the current permit prices create in drawing snowmobile tourists to our area. From comments we receive at snow shows to conversations we have with tourists over the phone and on the Internet, visitor permit prices are frequently and most often mentioned as the main roadblock to more people coming to the northwest. Unless visitor permit fees are significantly reduced, the return on investment from our marketing efforts will continue to deteriorate and eventually will make the effort a losing proposition. Permit prices as they stand now have resulted in some of our roofed accommodation members deciding to close their operations for the winter due to the fact they could not sustain enough business to make operations viable. In conversations with these operators, they generally tell us that permit fees are the main reason they are not getting enough people to their facilities.

The association believes the current permit system in Ontario is not working, either for the snowmobile clubs, which need the permit revenues to properly maintain the trails, or for the visiting tourists who feel these permits are too high.

On behalf of our association and our 400-plus members, I want to thank the standing committee on general government for allowing us to make our views on Bill 101 known.

**The Chair:** Thank you very much. That leaves us with about three minutes per caucus for questioning. This time we'll start with the Liberals.

**Mr Brown:** I always appreciate presentations that are clear and concise and put forward very concrete suggestions for us. I come from what you would consider to be down east—that's from Manitouwadge to Nairn Centre—and I've found as a northerner that it just depends where you are who else is defined as being in the north. For example, Sudbury is certainly almost in southern Ontario if you're in Kenora.

I'm interested particularly in the tourism aspect, which you are here to talk about, and your belief that the permits are deterring people from coming to Ontario, particularly this part of Ontario, to partake of our experience. Americans and Manitobans are finding Ontario to be overpriced, I guess, for this experience. Is that what you're telling us?

**Mr Cariou:** In general, the product, given the conditions, is felt to be very good in Ontario, and that is due to the OFSC. Certainly I not only believe but I know, from talking to people in places such as the large market west

of us in Manitoba, being Winnipeg, and Minneapolis in Minnesota and areas in Wisconsin, that the permit fees are seen as the major problem, especially for people who want to take their families. It is a per-sled fee, and \$25 a day I think was the daily permit fee. I think it was \$75 or \$80 per week. That becomes a \$200-a-week or \$250-a-week proposition for someone trying to get into our area to do winter tourism. So, yes, it is the main barrier that people in tourism marketing hear, sometimes much more vociferously than others. We are the target of some abuse by people for these permit fees.

We do realize, saying that, that it costs money to maintain trails, so there has to be some funding mechanism. The product has to be there to increase tourism, so the OFSC does a good job in maintaining trails. The product is a very important part of that, but the price that people have to pay is a definite barrier. It's a price objection and results in people going to other jurisdictions, certainly in northwestern Ontario, which I can speak for.

**Mr Brown:** In your experience, is the product as good in the northern states and in Manitoba as it is here, or are we offering a superior product?

**Mr Cariou:** I'm not an avid snowmobiler myself. I can't tell you. Generally people I talk to who are avid snowmobilers and who have been to those jurisdictions say the product in Ontario is better, largely because there is less congestion and there are more funds available to date because of permit trails to do it. So it is a bit of a Catch-22 situation. I think there is, through the economic impact and the revenues connected from taxes paid through by snowmobile tourists, an opportunity to lower permit fees and perhaps look at other ways or other revenue streams that can be making their way to the clubs so they can pay for grooming.

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I've never gone on a snowmobile trail in Minnesota. I understand congestion is an issue down there. The conditions are generally not bad, but with more people, the trails generally are in rougher shape than they would be up here. We are known for good trails and that's what we market. That's one of the main features we use in our marketing.

**Mr Brown:** So the price point is—

**Mr Cariou:** It's a price-point barrier.

**Mr Brown:** We've gone beyond, in your view—

**Mr Cariou:** I can tell you, sir, people told me last year that groups of 20 or 30 from areas in eastern Manitoba were cancelling their trips when they found out reciprocity was cancelled as being due to the fees. It was going to cost over \$1,000 just for permits for a three-day stint in northwestern Ontario, so they cancelled those, and the associated economic impacts are lost as a result as well.

**Mr Brown:** That would mean the clubs are losing money because something is better than nothing in terms of price point, and obviously the Ontario economy in general would be suffering if we don't have as many visitors.



**Mr Cariou:** I agree with that. I think partially you can make up on volume what you lose in price. You sell more permits or you get great compliance at a lower rate and therefore you neutralize—

**Mr Brown:** The Henry Ford thing.

**Mr Cariou:** You're robbing Peter to pay Paul, that kind of thing. That's right, the Henry Ford thing.

**The Chair:** Mr Christopherson.

**Mr Christopherson:** Thank you Mr Cariou. I want to follow up on exactly that same issue that showed itself at the outset and is going to continue to be an issue all the way through: the price of the permit.

I would like to point out, however, how impressed I am with the fact that you've done something that very few do, especially from the business side of things, which is to say, "Maybe there's a share of this that we ought to be responsible for," as opposed to always saying that somebody else should pay it. You recognized that the clubs shouldn't be expected to bear the whole thing and then mentioned that on the tourist side, if your industry's going to be a beneficiary, then maybe there ought to be something there. I credit you for raising that.

It may be beyond your own personal experience, but do you know how the northern American states fund beyond the permit fees? Do they only maintain to the level of permit revenue or is there actual state or federal money that comes in on top of that?

**Mr Cariou:** I can't tell you for sure, sir. I know in Minnesota it's \$16 for a seasonal visitor pass. I do believe there is an allocation from the state of Minnesota through the collection of gasoline taxes to, I would assume, affiliated clubs in the state to pay for the grooming of trails. That is my belief.

The situation in Wisconsin I do not know of. Manitoba is certainly a similar system to what we have. The fees are just substantively lower than they are in Ontario.

**Mr Christopherson:** So in Manitoba they must provide support from general revenue funds.

**Mr Cariou:** I do not believe there is any support from the general revenue funds in the province of Manitoba. The clubs just charge much less than the OFSC charges.

**Mr Christopherson:** Somewhere, though, the dollars—you say they have trails comparable to ours?

**Mr Cariou:** Generally comparable. I'm not an avid snowmobiler. I think you would need to ask an avid snowmobiler that. I know that issue was brought up in the media scrum about this last year, where some people said the trails aren't the same. People from Manitoba responded, yes, they are. I think the snowmobilers could answer that question better than I could.

**Mr Christopherson:** There were earlier presenters, not specifically from your industry, who raised the question of the fact that tourism has gone down, that you've lost customers.

**Mr Cariou:** Yes.

**Mr Christopherson:** You've raised that here. Is there any question in your mind that you have lost some business and that you're not anywhere near maximizing

the potential because of the permit fee? Can you say that categorically?

**Mr Cariou:** I could unequivocally say there is no question in my mind business is down. Some of our members have closed as a result of a loss of business and it is largely due to the fact that the snow conditions over the past years have been crappy in the northwest on a relative scale. Yes, I definitely would say that.

**Mr Christopherson:** Good. Thank you very much.

**The Chair:** Mr O'Toole?

**Mr O'Toole:** Unless Mr Spina—he never puts his hand up so I'm not sure if he wants to—

**The Chair:** He's probably not as magnanimous.

**Mr O'Toole:** Anyway, I appreciate your comments and I'll be brief to allow Mr Spina to raise his hand to speak.

You mentioned that fees are an inhibitor or barrier.

**Mr Cariou:** Yes.

**Mr O'Toole:** I like to simplify it down into "Reducing taxes creates jobs."

**Mr Cariou:** Yes.

**Mr O'Toole:** That's kind of our whole theory, so I think that message has been heard. That's one of our main planks, I suppose.

I want to ask one off-the-wall, totally: when you get a user-pay system, do you think it will impact the volunteer interest in participating for free? Meaning the trail groomers, trail wardens. Do you not think in a year's time they'll be expecting at least some stipend for their work since they're paying 150 bucks or whatever?

**Mr Cariou:** That would speculation on my part, but that could be a possibility.

**Mr O'Toole:** Yes. Thank you.

**The Chair:** Very briefly, Mr Spina.

**Mr Spina:** Gerry, good to see you. Thanks for coming forward.

Just a question on the tourism issue: is it probably not more accurate to say that the adoption of the \$300 non-resident resolution that the federation put forward at their convention last September, and the rumour of that being in place for this year, was far more prevalent than the actual standard \$120 or \$150 fee as a deterrent?

**Mr Cariou:** That didn't make the OFSC any friends, I'll tell you that.

**Mr Spina:** I'm asking you, though, Gerry, if the rumour of that was probably more of a deterrent to coming to Ontario than the fee itself.

**Mr Cariou:** I think, Joe, that it has been consistent. Three to four years ago, I was with the local tourism marketing agency in 1995 and 1996. At that time it was also an issue. I don't really know if I can answer that question. I think that had something to do with it, but I know permit fees are too high. This is what I'm hearing from people when I'm trying to get them to come to this area. Something we should be able to do down there, if these people are contributing through expenditures, perhaps some of the tax revenues that are going to be gained through that anyway, even though taxes may be lower than they have been, could be used to offset. We



have a conundrum. We need a good product to get the people here, but are we putting a price point in from them that is a barrier that we cannot overcome?

**Mr Spina:** Would a one- or three- or five-day permit help that?

**Mr Cariou:** Those are required. I do believe there needs to be more flexibility. In northwestern Ontario, people want to come in for the day from Manitoba, perhaps come as far Kenora and go back.

Reciprocity was great. I think the local clubs may tell you there was reciprocity in this area, I believe in 1998 and 1999. It was a locally negotiated thing for just the Kenora Sunset Trail Riders area. That worked very well.

I can tell you that last year when we told people from Manitoba that did not exist, we had to duck.

**Mr Spina:** Thanks, Gerry. Good to see you again.

#### LAKE OF THE WOODS BUSINESS INCENTIVE CORP

**The Chair:** Our next presentation will be from Lake of the Woods Business Incentive Corp. Mr Carlson, good afternoon. Welcome to the committee.

**Mr Grant Carlson:** Good afternoon. I have two additional people with me.

**The Chair:** They're certainly welcome. If you could introduce them for the purposes of Hansard.

**Mr Carlson:** Michael Kraynyk, president of the Sunset Trail Riders, and Christine Dodd, marketing officer with LOWBIC. We'd like to thank you for this opportunity to present.

What we have done at Lake of the Wood Business Incentive Corp this summer is to organize what we called a snowmobile stakeholder committee. We brought together people representing various groups in the area. We had STR, Sunset Trail Riders; city of Kenora; Kenora and District Chamber of Commerce; tourism organizations, including Sunset Country and Tourism Kenora; police members; and members of LOWBIC.

We formed this committee to study ways of bringing the various stakeholders together to address current issues relating to snowmobiling in the city of Kenora area. As well, we looked at some aspects of Bill 101 and how they might affect snowmobiling in the city of Kenora and surrounding areas. One thing we agreed to focus on most was the tourism aspect and another idea we had brought together was forming partnerships between the local snowmobile club and various other groups, to both help bring their costs down and increase our ability to bring tourism to Kenora.

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With the partnership idea, we believe that the basis of having pristine, well-groomed trails lies with the local snowmobile club, with the OFSC trails. Through the committee, several areas that the STR required assistance on behalf of the city were identified. These included curb grading, snow removal issues, storage of groomer equipment and various other general trail maintenance issues. The city and the STR are now in the process of

identifying those areas where the city can help the club. They'll be doing those for no cost in return for the volunteering that the club performs to help bring tourism and to make the area enjoyable for local riders.

Another idea that was discussed and will be implemented is that the STR is going to be using city property for hosting a sno-cross event later this year. This will bring revenues not only to the city but to the club and local merchants. It will also increase knowledge of Kenora as a snowmobile tourism destination.

LOWBIC itself, in conjunction with the STR, is working on an agreement—through Christine, we're working on that—whereby LOWBIC would help to coordinate permit sales, do some accounting, administration functions for the STR. The reason we believe this is necessary and important is that it will allow the volunteers of the STR to concentrate on trail maintenance, which is their number one priority.

Our committee believes that the way we have been operating co-operatively should be an example to other clubs in other regions of the province on how to have a co-operative approach to snowmobile issues.

The second main focus that we had in relation to Bill 101 was the short-term trail permits.

Just some stats I have here: in the 1996-97 season, there were 171 one-day visitor permits sold by the STR. In the 1997-98 season, there were 74. In 1998-99 we had 0. For the 1999-2000 season, we had 367. There are two mitigating factors on the one-day permit sales: for the 1998-99 season, as Gerry and others had talked about, there was a trail reciprocity agreement with Manitoba and the STR. In the 1999-2000 season, this agreement wasn't renewed. Permit sales increased accordingly because of increased trail monitoring and also an ad campaign taken out by the OFSC to encourage people to buy the permits.

Even though they did increase last year, there still were problems with the tourists visiting the region. We have a survey attached at the end of the package I've given you, which Christine had done last year. Just a couple of examples of some of the camps she had spoken with: one camp saw its revenue drop by \$1,000-plus a week over the 1998-99 season. Another had seen a loss, at the time of the survey, in the range of \$3,000 to \$4,000 over the winter before. The operators did state that this was a direct result of the lost reciprocity agreement with Manitoba and the cost of the short-term trail permits. As Gerry has told you before, this has resulted in some tourist operators announcing they'll no longer remain open in the winter.

Another number, supplied by Tourism Kenora, showed a drop in snowmobile tourism inquiries from Manitoba for the 1999-2000 season over the 1998-99 season, when there was reciprocity—just for January and February. These were packages that were sent out to people on snowmobiling. It went from 22 packages sent out in 1998-99 down to seven for 1999-2000.

The committee, with a lot of discussion that we carried out over several weeks, had some recommendations for



this committee just for the setting of short-term prices. First, we believe that the setting of prices should remain with the OFSC. We believe the user-pay system is an ineffective way to deal with the cost of maintaining the OFSC trails. We believe the government should recommend that the day-permit price be set at \$25 for a weekend or three-day pass, subsequent days costing \$10.

We also would recommend that permit prices be set for longer intervals than just yearly, as they're done now. It leads to a lot of confusion among tourist operators. People are trying to market, "How much is it going to be this year?" People are calling; they don't know. Reciprocity agreements should only be considered if the snowmobile clubs are compensated for the loss in permit revenue. We believe this is a government issue as visiting snowmobile tourists inject an estimated \$1 billion into Ontario's economy in the winter, as well as the taxes paid by tourists on gas, supplies and other necessities.

Trails still require maintenance with reciprocity in effect. STR has estimated in the past that they stand to lose up to \$7,500 in income each winter with reciprocity. With the lower permit prices on the other side of our border with Manitoba, STR is in a somewhat unique situation compared to other Ontario clubs.

One other recommendation we have if Bill 101 does pass is that the OFSC would lower seasonal permit passes. We believe that with the increased volume that would result, hopefully they could manage to do what they're doing now and bring a little bit of a lower cost to the people who use it.

Tourism issues: as previously stated, in Manitoba it's \$20 for a four-day pass; in Minnesota it's \$16.

I can speak on a few questions that the committee had about funding. Minnesota gasoline tax revenues are used for funding the trails. They do not have a mandatory permit for the local clubs. It's just a user-pay if they want to pay the local clubs, otherwise they just pay the state permit price.

In Manitoba there is no funding out of general revenues.

In North Dakota, once again it's not mandatory for permits. If you've been down there in the last two years, there's nowhere to drive anyway.

A couple of other examples with tourism last year, just to reiterate: one hotel alone last year lost approximately 20 room rentals when the people from out of province heard about what it would cost them for the trail permits here. In the Kenora region, snowmobile tourism is an increasingly required business during the otherwise slow winter months. It is hoped that by having an excellent trail system with short-term permit prices in line with our neighbours to the west and south, the region will enjoy increased winter tourism. If these tourist camps all close up in the winter, if gas stations etc aren't having longer winter hours, what's going to happen is we're just going to lose the tourists anyway because there'll be nothing for them to come here to do. The trail system aside, they need the amenities.

Some ideas we had on government funding: we believe the government needs to continue to invest

capital in the trail network of Ontario. Prior funding is having a positive effect on the trail system. At the same time, the committee felt that trail funding given by the province should be earmarked directly toward local clubs as operational dollars to cover expenses. For example, the STR spent \$30,505 in trail operating expenses for the 1998-99 season.

Current 50-cent-dollar funding means that the local clubs have to work very hard to match the funds. It forces them to spend their valuable time on fundraising and permit sales instead of being out maintaining trails. It causes strain on the volunteers and takes them away from their priority of building and maintaining trails.

Another point was that new sources of funding could be explored. An example would be, as I talked about, in Minnesota the gasoline tax monies, or directing a portion of monies raised by the government through taxes paid by snowmobilers directly toward funding snowmobile trail development. In 1998 a study indicated that the government received \$63 million in tax revenue. At the same time they had invested \$14 million through the Sno-TRAC program.

Another thing we talked about was with trail users. Again I'll defer to many of the comments that people before me have given. This wasn't our primary mandate that we looked at, but the committee believes that all recreational users should contribute to the maintenance of OFSC trails if they're using them.

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However, we believe that groups such as trappers, commercial fishermen, prospectors, work crews and others who use the trails in the course of their work should be exempted, as they traditionally have been. Our idea there is that to eliminate confusion a special permit could be issued by the MNR when licences or crown land work permits are issued that would identify the snowmobile as being used for non-recreational use only. Then through the normal system that will be up and running with Bill 101, if they are found being used recreationally, the standard fines or permit fees or whatever would apply. We believe this would be an easily administered and enforced system.

Just one comment on enforcement. The committee believes that recognized law enforcement officers should carry out enforcement of Bill 101. These officers are paid. They are mandated by the province to deal with non-compliance with the sections that are covered, such as the Motorized Snow Vehicles Act, the Highway Traffic Act and the Trespass to Property Act. In a lot of cases, police officers are looked upon as being more impartial and neutral than members of a club or organization might be.

In conclusion, we'd like to thank you for giving us this opportunity to present. We have the two attachments there: the interviews that were given with the four lodges last year and also one page at the end on where the snowmobile inquiries, which the printed material was sent to, originated from for the last few years.



**The Chair:** Thank you very much. We appreciate the degree of detail in your presentation. The appendices I'm sure will be of value to all the members.

That gives us about four minutes, and this time I'm going to make the executive decision to give all the time to Mr Christopherson. We'll do it in rotation any time we have four minutes or less in any presentation.

**Mr Christopherson:** Thank you for your presentation. What struck me, by the time you got to the end of your presentation, was that there seems to be a very high degree of consensus and agreement about what should happen. The only one who seems to be out of step is the government, because virtually all the presentations are hitting on the same notes, with very minor variations. I would hope that if that continues through the rest of the day in the hearings, the government takes note of that. It's unusual to have so many different perspectives on any given subject have so much agreement on things that are good and things that need to be changed about the proposed bill.

There are at least two issues I'd like to pursue. I believe you said rather definitively that Manitoba does not provide any funds out of general revenue; it's just what comes from the permits. Is that correct?

**Mr Carlson:** That's what I have been led to believe. I have talked to them.

**Mr Christopherson:** Have you been on the trails personally in Manitoba?

**Mr Carlson:** Somewhat.

**Mr Christopherson:** How do they compare, in your opinion?

**Mr Carlson:** Some regions I would say are below what we have; some regions are very comparable. It depends where you go and the club that is there. For example, from here to Falcon Lake, once you get into Manitoba, you do notice that the trails aren't as wide as here. I only had an opportunity to go there once last year. On a couple of corners it was a little dangerous, so I like how we have the wider trails here. If you get up to an area like Lac Du Bonnet, it's really nice and wide open. They're on the Can-Am trail system up there. As I said, it depends, but some areas are very comparable.

**Mr Christopherson:** The reason I raise that, of course, is that the fees are so dramatically different that something has to give. Either they don't have the same quality of trails, or that is sufficient money to maintain the kind of trails we want and there's excess money being paid, I guess along the lines of the presenter who suggested there was a bit of a tax grab here. But this circle is not squaring out. What's your sense of where things are?

**Mr Carlson:** Having originally come from Winnipeg—I moved here a couple of years ago—and the way that the two provinces differ in registration and whatnot, I know that Manitoba's price for registration of snowmobiles is higher than Ontario's. There is a mandatory permit there. I haven't actually sat down and done it myself, but what I have heard from having talked to people, they say that in the end when you factor in taxes,

registration, permit prices etc, you're looking at basically almost a horse apiece on the price. I can't say for sure that that's true, but that's what I have been told, and in fact some people even say it's more expensive in Manitoba. Granted, some people might think the permit is very high in Ontario, but I would say there are probably some circumstances that mitigate why it is higher here compared to Manitoba; mandatory permit might be one of them.

**The Chair:** Our time is up. Thank you very much, all three of you, for coming forward today. I appreciate your taking the time to make a presentation.

#### NORTHWESTERN ONTARIO SNOWMOBILE TRAILS ASSOCIATION

**The Chair:** Our next group is the Northwestern Ontario Snowmobile Trails Association, if they could come forward, please.

**Mr Brown:** Mr Chair, while they're coming up, could I just ask that our researcher look into the various schemes in Minnesota, Manitoba, Michigan, New York, Ohio, North Dakota—and in Quebec, no doubt—just to see what other jurisdictions are doing? Obviously we're going to need to be competitive here.

**The Chair:** Thank you. That would be quite appropriate.

**Mr Christopherson:** A comparison of the revenue and expenses and also the quality of the trails.

**Mr Brown:** She may have trouble doing that.

**Mr Christopherson:** Well, you can do a comparison if you say one is 15 feet wide and the other is only seven feet wide.

**The Chair:** Might I suggest that if there is a posted standard for that, we'll have the researcher bring the standard.

**Mr Christopherson:** As much as they can get.

**Mr Brown:** Just so that we have a base here.

**The Chair:** An excellent suggestion. Thank you very much.

Mr Russell, I take it? Good afternoon and welcome to the committee.

**Mr Brian Russell:** Good afternoon. My name is Brian Russell. I live in Rainy River, Ontario, the other side of the lake. I'm here on behalf of the Northwestern Ontario Snowmobile Trails Association, of which I am the vice-president. Rainy River is a small town across the lake where the stated population is 1,000, but I think that includes every dog and alley cat, so I'm from a little town.

I'm here to speak in favour of mandatory OFSC permits. I wish to thank this committee for giving me the opportunity to speak, and the Harris government for their interest in the winter wonderland sport of snowmobiling. Not only am I from a small town, but I am also a baby boomer, so I hope you'll bear with me.

My presentation today revolves around four main topics or points: (1) the OFSC must maintain full authority on permits; (2) "mandatory permits" means manda-



tory and easily enforceable; (3) exemptions for trappers and workforce people; (4) OFSC wardens must have authority under the Motorized Snow Vehicles Act to enforce mandatory permits.

NWOSTA is a district association within the Ontario Federation of Snowmobile Clubs representing district 17. There are 13 member clubs within NWOSTA. To name them briefly, they are the Atikokan Sno-Ho Club, the Dryden Power Toboggan Club, the Ear Falls White Knight Riders, the Emo Borderland Snowmobile Club, the Fort Frances Sunset Country Snowmobile Club, the Ignace Otters Snowmobile Club, the Kenora Sunset Trail Riders, the Mine Centre/Seine River Lost Toboggans, the Nestor Falls-Lake of the Woods Riders, the Rainy River Wildlands Snowdusters Snowmobile Club—I meant to mention that I am the vice-president of that one as well—the Red Lake District Trail Masters Club, the Sioux Lookout Ojibway Power Toboggan Club, and the Vermilion Bay Sno-Drifters snowmobile club.

All of the 13 members are still trail-building clubs. That of course is why it's a little more expensive here—we're still building trails—and most are relatively new, the notable exception being Atikokan, which is not only our elder statesman of 33 years, but in many cases our founding father. I know they were very instrumental in creating the Rainy River club.

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NWOSTA was set up as a buffer between OFSC and the member clubs to assist in speeding up the endless paper trail, handling of trail permits, construction of a regional map and to highlight important dates, deadlines etc, essentially for the club secretaries. Of these 13 member clubs, one, namely the Vermilion Bay Sno-Drifters, will be making a presentation here today. The remaining 12 will be sending in written submissions.

Did I tell you that baby boomers are survivors? We were here before snowmobiling and lived through the era when snowmobiling was called skidooing. Trails were very limited, and grooming meant combing your hair. My mother of 95 years, on the other hand, was here before the automobile, roads, drivers' licences and registration plates. I'll leave that with you for a moment and carry on.

NWOSTA understands that mandatory trail permits are a consideration under Bill 101 to promote snowmobile trail sustainability and enhance safety and enforcement. We also understand users, such as trappers and workforce people of whatever type, could obtain a limited-use permit to allow unrestricted access to designated sections of trail. "Mandatory permits," then, means that anybody cruising an OFSC trail, whether on private or crown land, must have a valid OFSC trail pass to help maintain said trails, much like a vehicle needs a licence plate.

One of the points the OFSC feels very strongly about is that the OFSC has final authority on the design, cost, distribution etc of all trail passes. The reasons are obvious. First, all present land use forms are signed between the land owner and OFSC with the local club as

the custodian. Second, over the years we have relied on volunteerism not only to build trails, maintain groomers and equipment and groom trails, but to run a wide variety of special events to put money into the clubs' coffers to keep things running. In our own case in Rainy River, even mandatory trail permits would not mean club sustainability without special events and heavy volunteerism. NWOSTA and its member clubs feel this crucial volunteerism would be jeopardized if the government took over control of the trail permits. Once again, here in Rainy River, some of the events the Wildlands Snowdusters put on to raise money for the snowmobile club include turkey shoots—for those who still have a valid gun licence and stuff—skeet shoots, various types of snowmobile races, dances, garage sales, swap meets, fishing tournaments etc. So you see, the volunteer base is absolutely crucial.

Baby boomers have seen OFSC and its 17 associated districts, or 281 clubs, develop 49,000 kilometres of groomed trail in Ontario, along with associated well-recognized trail passes. Truly, this is incredible. On the other hand, my mother has seen the ever-expanding development of highways and roads. The biggest difference between the two is that the snowmobile trails were largely built by volunteerism.

For mandatory trail passes to have an impact, they must be easy to enforce. Trained OFSC club wardens must have the authority to enforce the revised Motorized Snow Vehicles Act. It must be realized that the Ontario Provincial Police already have their plates full and we can't expect them to put much priority on OFSC trail pass enforcement.

One of the other problems that constantly comes up with non-trail-pass snowmobilers is that they say they don't use the OFSC trail, but often travel beside it for navigational purposes. When this occurs across farmers' private land, they often kill winter wheat or the like by not travelling on the trail. This results in irate farmers who come down on the local club and in some cases forces yet another trail reroute. If all trail riders had a permit or special pass, this problem would virtually disappear.

In conclusion, I'd only like to say that we, the member clubs of NWOSTA, see snowmobiling as our sport and we're proud of it. We've come a long way and would like to share our sport with local families and tourists alike. It would appear that easily enforceable mandatory trail passes, within reason, would not only be fair to everyone but would certainly enhance our sport and the tourism trade that goes along with it.

Thank you for your time.

**The Chair:** Thank you very much, Mr Russell. You've left us just over six minutes for questioning. This time we'll start with the government benches.

**Mr Dunlop:** Thank you very much, Mr Russell. I come from southern Ontario, the Orillia area. It's on the maps with quite a number of trails, but a lot of our members will go north in a lot of cases. We have quite a large membership in most of our clubs. I'm curious: in



the 13 clubs that you mentioned are in NWOSTA, how many memberships would that represent, just roughly?

**Mr Russell:** There were a little over 3,500 last year, as close as I can recall.

**Mr Dunlop:** So in each of the 13 clubs that would be around 250, 275 members, on average?

**Mr Russell:** No, within our area the bigger clubs would be Fort Frances, Kenora and Dryden. We have smaller clubs—like Rainy River itself, which had 66 members last year, but you have to remember we had three bad years of snow too. That number would normally be roughly double that. I'm sure that's true of the other clubs as well; their number of trail passes last year—in the last three years, in fact, we've had some pretty poor snow conditions and of course we've lost a lot of trail riders because of it.

**Mr Dunlop:** I guess my point is, I'm just trying to figure out, in the huge geographic area that you cover and the population not being very dense, how much of an impact that is on maintaining a club properly, as compared to some of the clubs in, say, north-central Ontario, where there would be maybe not as large a geographic area but they would have a lot of members because of the population itself.

**Mr Russell:** Within the OFSC there is a funding formula. I forget exactly how it goes, but it cranks out a number so that the building clubs and the smaller clubs such as ours—there are four factors. In fact, the vice-president of the OFSC just happens to be here and he could answer that question very directly. But through the funding formula, the smaller, more remote, especially building clubs, would retain more of the trail pass monies than the clubs that are very strongly established. Of course, the trails are all in place and they're not expanding, and they have a higher density of traffic on them.

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**Mr Dunlop:** With 13 clubs and 3,500 members, I guess the other question I should have asked is, how many kilometres of trail does that actually include? I guess that would be part of the funding formula as well. I know I'm not making myself very clear here, but I'm looking at how hard it is to operate a club in the area.

**Mr Russell:** It's tough. There are a lot of miles of club here. Rainy River itself has a little over 350 miles of TOPS trail. For a club of 66 members, that's stretching it out.

**Mr Dunlop:** That's my point. OK.

**Mr Russell:** Of course, beyond that we also have local club trails, and believe it or not, we get around them, albeit not too many times in the last couple of years because of such a lack of snow. In fact, a couple of times last year we just pulled our drag right in half.

**Mr Brown:** Thank you for a most interesting presentation. Just to help the committee out, this year you were paying how much for trail permits?

**Mr Russell:** The early bird price this year, as next year, is \$120; \$150 after December 1.

**Mr Brown:** How much do you pay in registration for each snowmobile? Do you pay every year?

**Mr Russell:** When you buy a new sled, it's \$15 for the first year, and then up here we get the break where it doesn't cost us anything per year after that.

**Mr Brown:** I'm just trying to sort some of this out in my head. We drive our cars for \$37 a year in vehicle registration in northern Ontario; \$74 in most of the rest of the province. We've heard a lot of testimony before you came up about the price of permits being a deterrent to the sport and a deterrent to visitors to the area. What is your view on pricing at the moment?

**Mr Russell:** Well, there are always going to be people saying the price is too high. I mean, the price of groceries is too high; certainly the price of gasoline is too high. I guess, in that same vein, you could certainly say the price of a trail pass is too high. That's life these days, isn't it?

**Mr Brown:** I guess I'm just trying to determine the price point. As you say, to some people any price is too much, and it really doesn't matter to others. What I'm trying to get at is, do you believe we are at that price point where you can't increase the user fee any more, or, if we reduce the user fee slightly, would we have more revenues because we would have more people using the system? I'm just wondering where that balance is, in your view.

**Mr Russell:** I would say we are at the maximum right now. It may even be too bad. We went through the \$100. For some reason, \$100 seemed to be a magic number. Then we went from \$100 to \$120. However, we're at \$120, and that's probably as close to maximum as we're going to get. But then again, that gets determined at the AGM of the OFSC, which is later this fall. As you well know, it's a democratic society, and it depends on how the vote goes.

**Mr Brown:** I well know that.

**Mr Russell:** That's what we're all here about, isn't it?

**Mr Brown:** David knows it better.

**The Chair:** Mr Christopherson.

**Mr Christopherson:** Mr Russell, I want to continue that same line of thinking. You make the point in the closing part of your presentation, "It would appear that easily enforceable mandatory trail passes, within reason, would not only be fair to everyone, but greatly enhance the sport and the tourism trade that goes along with it." If you were here earlier—I don't know if you were or not—and heard some of the presentations, you heard just about everyone, but certainly quite a number of people, very emphatically, unequivocally say that at the current rate of the permits, tourism industry has been lost, dramatically, some would argue. What's your sense of all that?

**Mr Russell:** I don't know if I would say "dramatically." Living right in a border town, we used to sell a lot more trail passes, especially to Americans from Minnesota, but that's across the river. The fact is, in Rainy River we probably have the most easily accessed trail to Minnesota, just across the river. That trail is always in place, at the latest, in mid-December, and it's groomed. We groom the river all the way out to Oak Island. The unfortunate thing is that as the prices go higher, a lot of these people will just go down the river



and they can ride beside the trail, or at least so they say, and there's nothing wrong with that, and they just don't buy a trail pass. There's not much we can do about it, because if you ever try to catch them, they're definitely not going to be on the trail.

But we still have a few Americans coming over. We're at the point where there are going to be more and more simply because they're tired of their trails. They've been there, done that and are looking for something new. More than anything it's probably going to take a couple of good years of snow, and I would truly expect to see them back.

**Mr Christopherson:** What percentage of usage on your local trails do you think is US tourists?

**Mr Russell:** On our actual trails?

**Mr Christopherson:** Yes.

**Mr Russell:** Other than the one out to Oak Island, very little. Other than that, I'm sure it would be less than 10%.

**Mr Christopherson:** And if you included—sorry, which one was it? Oak—

**Mr Russell:** Out to Oak Island.

**Mr Christopherson:** That's halfway between Kenora and Rainy River here, across the lake, out on Lake of the Woods.

**Mr Russell:** No. Up and down the river to Oak Island, that's very heavily used, not only by the Minnesotans and the Manitobans. They also come in by the Can-Am trail through the northwest angle to Oak Island. So there's a lot of traffic.

**Mr Christopherson:** Do you think any kind of reciprocity agreement can work? I know it has been proposed and pushed by some presenters, and I believe at least one said it really wasn't very practical. Can you just give us your sense of that?

**Mr Russell:** It would be tough to do, I would think. Certainly a licence plate on your car is a reciprocity agreement, right? You drive your plate from province to province or through the States or whatever. But in the case of a snowmobile trail, and in this case a private snowmobile trail owned by the OFSC, the more riders you've got on it, the more grooming you've got to do, and the more grooming you've got to do, you've got to have income from somewhere. If there were reciprocity, where would the income come from for all this extra grooming, assuming it did bring an influx of people, which I'm sure there would be, if we had full reciprocity. There would be an influx then, guaranteed. You can be darn sure that everyone from Minneapolis and Manitoba would be just flocking here to ride the trails.

**Mr Christopherson:** Thank you, sir.

**The Chair:** Thank you, Mr Russell. I appreciate very much your presentation and your answers to the questions from various committee members.

Our next presentation is from Mr Jeff Ferguson, if he is here. No response to that. The clerk has not found him, so we'll move on to Mr Rod Bergman. Is Mr Bergman in attendance? Well, that's one way to make up the time we've gone over in presentations.

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## VERMILION BAY SNO-DRIFTERS

**The Chair:** The next presentation will be from the Vermilion Bay Sno-Drifters, a group mentioned in Mr Russell's presentation. Good afternoon. I take it you're Mr Bethune.

**Mr Jim Bethune:** I would be Mr Bethune.

**The Chair:** Welcome to the committee.

**Mr Bethune:** I can partly answer a question that was directed to Brian regarding the price of our permits. When the highway washes out, MTO will go out and fix the highway. When our trails wash out, they're washed out. It's up to volunteers like ourselves to find the money to replace culverts, bridges, whatever. I thought that was an important feature to that question. We're just out in the woods with a washout, and dependent on people finding washouts in the first place.

Anyway, good afternoon. My name is Jim Bethune and I am representing the Vermilion Bay Sno-Drifters snowmobile club as their president. I thank you for allowing an individual from the club level to supply some input. I am here today speaking in favour of mandatory OFSC permits, and I thank the government for expressing an interest in supporting organized snowmobiling in this manner.

Vermilion Bay is a community of just over 1,000 people located approximately an hour east of Kenora. It is also the first location on the way to Dryden. The Sno-Drifters club is a small one, having sold 111 permits last season.

For three decades, snowmobile trails have gradually become linked and made more elaborate by the 281 OFSC member clubs who voluntarily, year after year, trim the trails for the next winter season. These individuals are left with a feeling of accomplishment at the end of the day, and that in itself is a recreational outing. These people also use and abuse their own sleds, chainsaws and equipment, all for the benefit and enjoyment of the permit holder. This gives people the opportunity to appreciate the winter season, whether it be to a nearby lake to enjoy an afternoon of ice fishing or just a scoot to do some sightseeing and exploring.

A buddy of mine has a cabin just west of here, and back in the early 1980s he would invite me out for a weekend now and then. We would set out with some general maps to get an idea of where we were, so as not to get lost. After a few hours of riding, he would ask me if I knew which way to go to get home, and inevitably I was wrong. It was a lot of fun, and was the foundation of where snowmobiling got some of its roots—or routes. Now, the main trail to Manitoba coincidentally passes through this area on the very paths we travelled on 20 years ago.

Nowadays, the volunteers do such a fantastic job of signing these trails and staking the lakes that it's virtually impossible to get lost. Last winter, my wife and I rode from our doorstep to the Quebec border without having



to take any detours due to lack of connections. In fact, one of the most tremendous feats is that in Thunder Bay, at one of the busiest intersections, there is a road crossing where, when a snowmobiler pushes the button, all traffic comes to a stop and allows them to cross the street and continue on the trail. A snowmobiler can literally go to Canadian Tire, do their grocery shopping at Safeway or even go to a convention at the Landmark Inn, all at that intersection. Had it not been for the co-operation of private landowners, a sled would not even get there from here without being trailered from Kakabeka Falls, approximately 20 miles west of Thunder Bay. Over the course of time, through friendships and acquaintances, private land-use permission was granted to clubs, and to this day this effective harmony allows for safe passage from one territory to another.

If you think that is special, check out the Timmins area. Who needs a car when you can get just about anywhere in the Timmins area on your sled?

As you can tell, the local network of trails continues to be a valuable community resource, providing economic benefits to our region but, even more, a recreational, social and healthy outlet to the great outdoors. Our club apparently was the first in this area to hold a poker derby. I understand that was quite a major event, with people coming from miles around to participate. Most clubs now run a poker derby in an effort to subsidize providing safe, smooth trails for their permit holders.

We have been informed that our club provided some of the best trails in the area last season, and I think we can boast the greatest percentage increase in permit sales for the entire province. The Sno-Drifters' first annual permit sales blitz in October of last year, which offered prizes, was an overwhelming success. The local members have been telling us that they are truly looking forward to this year's event.

The Vermilion Bay Sno-Drifters got its beginnings riding on so-called turkey trails, but in recent years the club went on a mission connecting us not only with Kenora but also with Ear Falls, nearly 100 kilometres to the north. The route to Dryden is currently on ice, but a land trail is in the works, which again will likely involve the co-operation of private landowners.

I brought with me a picture I'd like to show, a little bit of the history of the club. In 1996, the Sno-Drifters did a lot of opening up of trails. I don't know if people can see what I have here. I'll just bring it around.

**Mr Christopherson:** I can pass it around if you like while you're talking.

**Mr Bethune:** Fine. Thank you.

The Sno-Drifters were extremely proud of their effort in developing trails. That was actually hanging in one of the company offices. I picked it up this morning to bring it along.

As with any club, ours is still evolving. Some of the pioneers who got the ball rolling doing most of the back-breaking labour are now putting their feet up and allowing new blood to step up to the plate. This allows for renewed enthusiasm and ideas, of which I am pre-

sently a large part. One of our new directors is a bush pilot, which is extremely advantageous, as he can fly over our trails inspecting for flood damage, some of which we will have to address again this fall before the snow flies. Another of our directors formerly worked with the Ministry of Natural Resources, and this is extremely helpful when it comes to applying for work permits. As you can see, we are a well-diversified group which maintains more than 200 kilometres of trails.

Of the 281 community-based snowmobile clubs in Ontario, 13 are in our district; namely, the Northwestern Ontario Snowmobile Trails Association, or NWOSTA. Because of our clubs' unity, we are a strong league and have developed varying degrees of friendships with one another. This bond is getting stronger all the time, and we truly believe in one another and the direction we want to go. Morale is good. Coincidentally, my wife, Shirley, is the dedicated volunteer secretary for NWOSTA. Our district has an elected volunteer governor who represents our area at OFSC meetings, which are held several times throughout the year to share ideas on the needs of the various districts.

On June 25, 1999, the Vermilion Bay area received 104 millimetres of rain, creating major washouts of highways and also, of course, our snowmobile trails. Our trail north toward Ear Falls sustained more than \$40,000 of damage. How could a small club of 111 permit holders possibly deal with such an expense?

Five water crossings required extensive work. Four of the crossings were completed with our volunteers working with Abitibi-Consolidated and O.J. Pipelines. The club's monetary contribution was largely supplied by the OFSC.

One of the water crossings was a bridge that was donated to our club by the Dryden Power Toboggan Club. The bridge was essentially a pulp trailer. The Dryden club provided pressure-treated lumber to prepare a wood deck and several volunteers to do the decking, all of whom brought their own tools and supplies, including generators, compressors, impact wrenches and so on. This is a clear example of the unity, co-operation and friendships established between volunteers in this district.

One of the water crossings was a group of large timbers which were cabled together. The water rose so high that the bridge floated downstream about 100 feet. The Ministry of Natural Resources informed us it would take at least a year of working with the federal Department of Fisheries and Oceans to get a new water crossing at that location. We needed a way north a lot sooner than that, so we looked at another alternative. We spoke to the local foreman of the CNR regarding the possible development of our own railway crossing. This crossing would avoid the water crossing altogether. The foreman supplied us with some direction, but told us not to hold our breath. Having no alternative, we pursued this venture. After three months of negotiating with CNR and Transport Canada, we got the go-ahead. We were informed that we were pioneers, as this was the first CNR crossing in Canada specific to snowmobiles only.



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What could possibly be a better way than this for keeping the trails open and operating? Who better than the OFSC knows and understands where we have been and where we are going? Who better than the OFSC knows where permit revenues should be allocated each year? The OFSC and member clubs must continue to play the lead role in controlling our own destiny. The OFSC is extremely well structured, and it is obvious that they should be the ones to determine the allocation of permit revenues.

My wife is the secretary-treasurer of our club, and she really knows how to make those dollars work. She is not the least bit intimidated by paperwork and has learned about every possible trail improvement fund available through the OFSC.

One of our local businesses who sells gas and meals indicated that he has never seen so many transients on snowmobiles. I believe that our trails are on the verge of being invaded by cross-border traffic, and I'm not certain that this is why our volunteers are involved.

The OFSC is doing a phenomenal job of governing snowmobiling in Ontario. All we need is the power to enforce permits on our trails, no matter where they are in this province. Nobody likes to pay for things if they don't have to, but all of the much-needed infrastructure cannot tolerate freeloaders.

It is very important to note that we must accommodate traditional users. In fact, in many cases, trappers, cottagers, ice fishermen and other outdoor enthusiasts are the ones who established the trails in the first place. Provided these individuals are riding in their primary area, they should be exempt from having to purchase a permit while riding OFSC trails. Because the clubs care about the OFSC trails, the police, conservation officers, STOP officers and volunteer trail wardens all must have the authority to patrol and enforce the mandatory permits.

By making the permits mandatory in Ontario, it would make snowmobiling become more official and it would be a professional step a positive direction.

Thank you very kindly for your expressed interest in hearing our sincere views regarding the betterment of our recreation.

**The Chair:** Thank you very much. You've left about four minutes this time. The last time I gave that to one group; it was Mr Christopherson. This time it will be to the government. Mr O'Toole? Mr Spina?

**Mr O'Toole:** Thank you very much for a very positive presentation. It's good to hear that. I commend the tone of co-operation and trying to move forward in a positive way. You're right: you'll never get unanimous agreement on anything, even in a democracy.

You mentioned, and I just took a little note of your statement here, "I'm not certain that this is why our volunteers are involved." This is the cross-border issue. That has come up in the fees and other areas. Of course, the overarching theme here is tourism has a ripple effect in the economy. How do you think they should handle the fee for visitors or tourism, whether it's in the States

or Manitoba? Because that rate will determine a lot of the outcomes. If it's too high, you'll get none and everybody else suffers; if it's too low, you'll get too many and you'll have too much work, too many washouts, whatever. What's your sense of how to manage that?

**Mr Bethune:** It's a very, very difficult subject of price and infrastructure. Like you say, the better it is the more they will come. The best example of that is: my wife and I did ride out to the Quebec border. In the Timmins area, we noticed how extremely overrun the trails are. They're probably the best trails that we have witnessed in this province, but at the same point, there's a lot of traffic, and it's probably nothing compared to the northern states and stuff like that. We're relatively new at this. We only moved here four years ago from Manitoba. We were Winnipeggers, stubble-jumpers, as many would call us.

**Mr O'Toole:** The fee mentioned before was sort of a weekend or a family pass. Do you think that would encourage it? Is that the right thing to do? Your volunteers will be working harder via that regulation.

**Mr Bethune:** I think, largely, the reason I did mention the fact that the volunteers weren't necessarily involved to develop tourism was that most of the clubs started just so we could get to your lake or, like you say, ice fishing and stuff like that. A lot of the people are trying to develop it for their own community, in some of the more central locations. As far as fees go, it is a very, very tough point.

**Mr O'Toole:** I'll just mention one more thing. Just from the energy that you exhibit here and the pictures etc, all the volunteerism, do you think by having inordinately high fees some of the people doing the volunteer work would perhaps expect, but not in a selfish way, to be paid, the volunteer STOP people etc. Do you think if they see lots of people and lots of revenue that they're going to start saying—that may have a detrimental effect on the casual, the recreational snowmobiler. That would be my concern. That's the most important issue here, the fee itself and the whole exemption regulation, in my view.

**Mr Bethune:** I definitely agree. The volunteers, like ourselves, also buy a permit, so I think you're right. It gets to a point where, why would I pay \$120 for a permit and then be expected to go out slashing trails and maybe even, like I say, even using our own equipment? I know we have a lot of people at our own district meetings, and unfortunately permit price does come up as an issue.

We also have the vice-president for OFSC, and he is very well-versed in emphasizing the fact that we have so much infrastructure that hasn't got a hope of getting any attention without the dollars. If we needed a bridge to go across a rapidly running river, it wouldn't happen if the permit were only \$40 for each member. We could double the permit price and still not get all the infrastructure in place over a short term.

**Mr O'Toole:** Just quickly, how much does your club get to retain of the \$120 or \$150 fee?

**Mr Bethune:** I believe it's 80% of the money.

**The Chair:** Thank you very much for taking the time to make your presentation on behalf of your club.



Our next presentation would be by the Lake Superior-English River Bait Association. Is there a representative from the group here? Seeing no takers, is Mr Ian Clark here?

#### KENORA TRAPPERS COUNCIL

**The Chair:** I know the group after that is definitely here: the Kenora Trappers Council. I see we have four representatives listed. If one or more would care to come forward, we are eager to hear what you have to say.

Good afternoon, gentlemen. Welcome to the committee. We've got 20 minutes for your presentation. Perhaps you could introduce yourselves for the purpose of Hansard.

**Mr Clarke Anderson:** I'm Clarke Anderson, president of the trappers council.

**Mr Ken Maw:** I'm Ken Maw, vice-president.

**Mr Anderson:** The reason for our presentation is that the trappers have a lot of concern with Bill 101, mainly because we've always had a good relationship with the local snowmobile club. But a lot of trappers are apprehensive that now they're going to have to pay the permit fee.

I'll read my brief here. As well as the brief, we have a copy of the letter we wrote to Mr Joe Spina and also a page from our minutes from November 1995, when the president of the snowmobile club came to our meeting when we were negotiating how we were going to deal with the snowmobile trails on our traplines.

In this area, most trappers have been co-operating with the local snowmobile club. However, because they feel Bill 101 will end their right to continue to travel their trapline trails without a permit, their mood is changing and trappers are starting to resent the establishment of groomed trails on their traplines.

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It is the opinion of the directors of the Kenora Trappers Council that this good relationship should continue. Snowmobile clubs have enough challenges without the trapping councils opposing the operation of their current trail system and any proposals to expand their systems. We want to co-operate and not be confrontational, so I'd like to explain our position.

As it is, substantial portions of the trail system in this area are located on traditional trapping trails, winter roads that trappers were using and historical portages between lakes. Often, parts of these trails are cleaned out and in use by trappers with their quads or their snow machines several months before the groomers are able to treat the trails. That's been especially the last few years where our winter snow has been scanty and the ice has been bad for much of the winter.

During negotiations to establish these trails, we were assured by the president of our local snowmobile club, at that time Don Cameron, at a meeting on November 25, 1996, that the trappers would not be expected to have trail permits while using groomed trails on their traplines

or while travelling to and from their traplines with snowmobiles.

Parts of the trail system in this area follow portages between lakes, which is the only feasible route from one lake to another. We have been told that it is not really possible to charge people to cross a portage. This evidently is something in the Public Lands Act. It is the feeling of some trappers in our organization that if they are forced to pay a full permit fee, they should be seeking payment from snowmobile clubs for the time and effort that they're putting into establishing these trail systems.

Our brief is really quite short. In conclusion, the Kenora Trappers Council, which represents a large portion of the active trappers in the area, doesn't support any arbitrary imposition of trail fees on trappers who are working their trapping grounds or travelling to and from their trapping area.

Thank you. If you have any questions we'd be happy to try to answer them for you.

**The Chair:** I am sure my colleagues will. You've certainly left us lots of time for questions. I'm going to give a couple extra minutes to the Liberals, because they haven't had an all-in-one shot so far. But we've got about four minutes for the others and six minutes for you, Mr Brown.

**Mr Brown:** Obviously, we've heard this afternoon from other groups representing trappers, making the same point that you do. It's a point that I seem to see a large consensus around the table on.

One of the things I want to question you on is, how do you think that could work? There was a suggestion that a large geographic area surrounding a trapline could be defined and there could be a sticker put on the machine to indicate that it was a trapper's machine. But if the trapper, for example, wanted to go to Quebec, as the gentleman before you did, he would have to pay the trail permit. Would a system like that, arrived at locally with the local snowmobile club, seem to be appropriate to you for an exemption?

**Mr Anderson:** I think it would be. Most of the trappers I've spoken to are worried about just trapping on their own traplines, but if they're going to go fishing out of Clearwater Bay or somewhere else, I don't think they have a problem with buying a permit.

**Mr Brown:** I suspect that many of your members happen to be members of the local snowmobile club in any event. Would that be so?

**Mr Anderson:** I'm not. I have no snowmobile trails on my trapline, but I think a lot of them are.

**Mr Maw:** Yes, a lot of them are.

**Mr Brown:** That they would use recreationally anyway. You're really the first, but one of the things that has been running through my mind for a while is the question of quads or ATVs that also would be using snowmobile trails in the off-season. Would your members use that with their ATVs now quite extensively?

**Mr Anderson:** In the early part of the season they do, before the snow gets too deep. A lot of times they are using it on their traditional trapping trail and they're



cutting out windfalls and maybe trapping the beavers and draining beaver dams that are obstructing the trails.

**Mr Brown:** Just so I get that in my head, in this part of the world you would start using the quads, going out to get ready in October?

**Mr Anderson:** Yes, early October.

**Mr Brown:** I'm from the south; I'm from the Chapleau area.

**Mr Anderson:** Not as south as some.

**Mr Brown:** Manitouwadge, you know. I'm just trying to get a sense.

One of the things I think the government needs to be considering when they're talking about all of this is the issue of ATVs on those very trails. I'm sure the parliamentary assistant knows, but that's a piece of the puzzle that is about to become more complicated and probably fairly significant.

I don't have any more questions specifically for you but I really appreciate your coming out and speaking to us today. It's people like you who make our job a little bit easier when you come out and make your point very clearly to us.

**Mr Anderson:** We appreciate the chance to have our input.

**Mr Christopherson:** Thank you, gentlemen, for your presentation. Could I just briefly turn your attention to the copy of the letter that you sent to Mr Spina dated June 8 of this year, three paragraphs down, middle of the paragraph: "The trails up here are predominately on crown land, which is supposed to be for the use of all citizens." There's been some reference to that. We don't have the issue of crown land and its use come up as often in southern Ontario. Just to give me a broader sense of things, can you expand on that? I don't think we've quite done that this afternoon. It has come up in a lot of presentations. So maybe just right from scratch in terms of the crown lands, how the trails have developed there, whether there has been any enforcement along the way, and why you see that as different from public lands. Then maybe you could give your thoughts on how one would go about enforcing someone who is exempt because they claim they only go on crown lands versus someone who maybe says that but actually is using it intermittently. How would the enforcement work? Just a quick lesson on all of that would be very helpful, certainly for me.

**Mr Maw:** Ninety percent of the land up here is crown land, and of course our traplines are on totally crown land, or almost totally. There are some mining claims and the odd chunk of private land that's within the trapline.

**Mr Christopherson:** May I ask a question? I'm sorry to interject, but I want stay with you. Obviously, there's a permit that you have to get. Is it the federal government that issues that permit to use the crown land?

**Mr Maw:** No. What we do is buy a trapping licence, and that gives us an authority to trap fur-bearers on a designated piece of land. They're called registered traplines. They are registered by the MNR, the Ontario government, and you're assigned to that particular area to trap. Most of it's crown land. Up in this part of the

country it's pretty well all crown land. In southern Ontario, where you're talking about, there is quite a bit of private land within the boundaries of the traplines.

I'm not sure where you want me to go from there.

**Mr Christopherson:** You make the statement that it's predominantly crown land, which is supposed to be for the use of all citizens. Obviously I would take from that that you're arguing therefore that it ought to be exempt from any kind of permit if you have even recreational use. With trappers we've talked about a total exemption of some sort or some variation of that because of the work they do. Here I'm gathering, though, if we're talking recreational use, your suggestion is that if they are only using that part of the trail that's on crown land, people ought not to be charged for that part of the trail because that's all they use. Or am I misinterpreting?

**Mr Maw:** I guess what we're dealing with there is that we're concerned about how the public land can be turned over to the snowmobile club since public land is meant for everybody. That's the third paragraph you're referring to?

**Mr Christopherson:** Yes.

**Mr Maw:** The main thing here is that there was one comment—it was in the local paper—where Ontario citizens were called outlaws for using the trails.

**Mr Christopherson:** Who would say that?

*Interjections.*

**Mr Christopherson:** I just want to be accurate, that's all.

**Mr Maw:** We, as trappers, took offence to that—

**Mr Christopherson:** I'm not surprised.

**Mr Maw:** —because we're using the crown land. The trails on a lot of the traplines in this part of the country were trappers' trails. The club came to the trappers and said, "Do you mind if we use them?" They had no objections to them using them, and all of a sudden we're told we had to buy permits to use our own trails, and they're automatically the snowmobile club's trails even though the trappers used them for eons. A lot of trappers took offence to that, and understandably so. In fact, it was 1993 when the club went to some of the trappers and asked permission to use the trails. Here's the letter from one of the trappers, saying they had no problem with it, and they were advised that they would never have to pay a fee on these trails. Then all of a sudden they're groomed, and the next thing is we're paying for a permit to use our own trails. We're already paying royalties for our fur, we're paying for a licence to trap there and we're also paying tax on our gas to get there and use them. So the trappers were getting a little concerned.

1540

**Mr Spina:** Clarke and Ken, thanks for coming and thanks for your letter, Clarke. I respect your opinion. David was being diplomatic enough not to bring my name forward as the person who used the word "outlaws." I respect your opinion on that.

You had two recommendations in your letter to me and to us in general, one that "trapping be included in multiple uses of trails, with trapper participation in the



establishment and maintenance of the trail system being recognized." I think that's a valid recommendation. I certainly respect your opinion, where you said to David just a few moments ago that the trappers had a trail, the snowmobile club asked for permission to use the trail, said you would not have to pay a permit fee for it, but if it's an OFSC-sanctioned trail through the local club, then of course it demands a permit fee, but the OFSC currently provides exemptions through the local clubs. I don't think we see anything changing, other than that the exemption would frankly make it even safer for you, because it would be laid out not just in the classes of regulations and legislation but also in the regulations themselves, so that it would be clearly identified. That would protect you within the written word, if you will, rather than just a handshake agreement. We certainly respect that comment. We've taken it into account.

The other, "We recommend that trappers should neither be denied access nor forced to pay a fee for the use of the trails on crown land," I think ties together with that. The issue of public access to crown land really alludes more to the comment Mr Christopherson made. MNR has had to play a very prominent role in the discussions around the formulation of the legislation as it's been presented now and also in the discussions of the regulations surrounding it, for the very specific reason that under the crown lands act it is and must be accessible to all citizens of the province.

Where it starts to deter from that, or where it changes from that general policy or becomes very specific, is that whenever anyone—and it's not just snowmobile clubs—uses crown land for a specific purpose, they get a land use permit, as you are aware, and that LUP allows them to use that land. Now, it can't be exclusive to those users, but there are points where the LUP is issued that it is enforceable currently under the trespass act. Certainly MNR can enforce it where the area designated under the LUP is not being used in the way it describes.

It's those kinds of things that we're arguing with. If you have any comments on that, we'd certainly welcome them.

**Mr Anderson:** Are you suggesting that the trails might be under an LUP to use them?

**Mr Spina:** Currently, whenever they are on crown land, the snowmobile clubs apply to MNR for LUPs for where the trail system goes.

**Mr Anderson:** I don't think you can get an LUP on a portage, though.

**Mr Spina:** No, and it's not 100% of the trail system. They have to pick certain areas of the trail that they can accurately describe to put into the LUP, and that's where it is the most enforceable, I suppose, for lack of a better way to describe it. It's these kinds of issues we are trying to work through with MNR. MNR is clearly at the table in ensuring that public policy is protected and, at the same time, people have the access to multiple uses of the system.

**Mr Anderson:** I can understand the need for money for the snowmobile clubs. But around here, the portage is

really the only feasible route from one lake to another. You may have high, rocky hills on this side and a cliff on the other side and—

**Mr Spina:** That's the only access from one lake to the other.

**Mr Anderson:** —you've only got one access. So if someone who isn't a trapper or isn't interested in riding on the trail wants to come, he pretty well has to go on the groomed trail to get to the other lake.

**Mr Spina:** Yes. You're thinking of a recreational user.

**Mr Anderson:** Yes, or traveller, miner, whatever he's out there for.

**Mr Spina:** OK. Thank you.

**The Chair:** Thank you, gentlemen, for coming forward this afternoon. We appreciate your presentation here today.

**Mr Anderson:** Thank you for coming to Kenora.

**The Chair:** Oh, it's our pleasure. It's probably the sixth or seventh time this committee has come up in the last five years.

#### IAN CLARK

**The Chair:** I believe our 3:50 presenter, Ian Clark, is now here. Good afternoon, sir. We are actually ahead of ourselves. You aren't late; we're early.

**Mr Ian Clark:** That's a change for the government.

**The Chair:** Indeed. You're certainly welcome to the committee. We have 10 minutes for your presentation.

**Mr Clark:** OK. I just got there, so I didn't hear all the things. I myself am in a situation where I live at Blindfold Lake, which is about 15 miles southeast of here. To get to Lake of the Woods I have to cross the snow machine club's trail, but the portage that goes from Blindfold Lake to Route Bay, for example, has been there from logging since before the war. I'm under the impression that I'm going to have to spend \$150 to join the snow machine club, whether I want to or not, to go out ice fishing maybe five or six times a year. It'll be \$150 for the club, roughly \$150 for insurance—300 bucks. Simple math: six times \$50 for each ice fishing trip. I'm not going to be registering the snow machine any more, and I know there are a lot of people who aren't going to. If it was 50 bucks for ice fishing registration or something like that, I wouldn't bat an eye. But I don't have time to ride around on a \$10,000 toy. In the wintertime, I plow snow most of the weekend. If I do get a chance to go, I usually go fishing. I just have a small machine, and I'm not out there joyriding. Are there going to be any exemptions for this kind of situation?

**The Chair:** Perhaps, since Mr Clark has posed a question, Mr Spina, if you—relatively briefly.

**Mr Spina:** In the legislation, Mr Clark, there is a clause that addresses the opportunity to create classes of permits and also to make some of those classes exempt. This was specifically put into the bill to be able to address the issue of traditional use of trails or users of traditional trails, whatever way you want to put it.



**Mr Clark:** Who is going to make the decisions whether or not they're exempt: each individual club, the government?

**Mr Spina:** That's what we're in the process of working out now. That's why we're having these hearings, so that we hear people's concerns and when we go back to draft those regulations, we can take into account those people. I would suggest to you that you come pretty damned close to our idea of an exemption of a traditional trail user.

**Mr Clark:** I've spoken to lots of guys in the snow machine club, and they don't have a problem with us if we're out there cutting firewood, ice fishing or whatever. So I don't see why the government should have, or anybody else for that matter. There's a lot of crown land up here; it's not like southern Ontario. To give control of all this crown land to one snow machine club—you know, where is it going to stop after that? Are we going to have to belong to the Canadian Automobile Association to drive down the highway? Where it is going to stop?

**Mr Spina:** Heaven forbid.

1550

**Mr Clark:** They must have a good lobby group to even get this bill on the table. They must be putting a lot of pressure on the government. But where does it stop, if these guys get their way with this one? That's all I've got to say.

**The Chair:** You asked the question, would it be the snowmobile club, the government? Who do you think would best be in a position to determine exemptions? Are you comfortable with the local club, or something a bit more regional or for the whole province?

**Mr Clark:** I would think it would have to be regional because every situation is different in each thing. But there has to be a set of guidelines, I guess, from somebody. I don't know which one would be—like I said, we've never had any trouble with the club here before, if we phoned them and said we're going here or there. So it's not a problem; as long as you're not out joyriding on their trails, they don't care.

**Mr Christopherson:** Just to probably muddy the waters for you, but as much as Mr Spina, as the parliamentary assistant, is saying that there are clauses for regulations, so far none of us have seen paper one. So all the questions you pose, we have the same questions. All we have right now is the government pointing to the law that will allow cabinet to make the decision on the recommendation of the minister at a cabinet meeting which does not have the public or cameras or anyone watching. So we're slowing getting a little more participation on the part of the committee in these regulations, but we in the NDP are certainly pushing for an opportunity for you to see the regulations and have comment before all of this is etched in stone. Because, as you know, trying to change things after the fact is extremely difficult. Just to be fair.

**Mr Clark:** Will the Ministry of Transportation have on record who has registered snow machines, say, in the last five years or four years? It should be on file somewhere, right?

**Mr Dunlop:** Yes.

**Mr Spina:** Yes.

**Mr Clark:** What would happen if you went back to that list and sent a survey out to everybody who has a registered snow machine and asked them this question: do they want this to go through or not? Do they want the registration put right on to the snowmobile club or do they want to have the option to join or not join that organization? Because we're automatically going to become members of the snow machine club when we register the machine. Is that right or am I off base there?

**Mr Spina:** No, the intention of the bill and the mandatory permit issue is to say that if you are a user on the system for recreational purposes, you would pay a fee on their system. Now, the OFSC has traditionally granted exemptions, either been forced to or co-operatively, to certain users of the trail system, either directly or through the discretion of the local snowmobile club. I don't see that we're here to change that other than if we're able to put it in and define it in regulation. Then what that does is, it in fact protects the individual now in law to have a right to be on that trail system as an exempted user.

**Mr Clark:** So that when we went to register our machine, we'd be paying a different fee then?

**Mr Spina:** No, if you pay your registration fee, which is exempt right now for northern Ontario, with MTO—I'm talking your ownership, that \$15 fee—that's got nothing to do with the other. You just go to your snowmobile club, and where they're saying verbally to you now, "It's OK, Ian. You can use that chunk of trail; we're not going to hassle you," they issue you—perhaps what we're looking at is a special permit. You throw it on your machine. You don't pay anything for it but it clearly identifies you as an exempted rider in that area.

**Mr Clark:** OK.

**Mr Spina:** That's the way they're kind of looking at implementing it.

**Mr Clark:** That wouldn't be a bad thing. And then you know who's out there and who isn't.

**Mr Spina:** Sure.

**Mr Clark:** So when they set this up, are they going to be able to have spot checks on crown land to stop people and check for these permits?

**Mr Spina:** They have that authority now under the constitution of the OFSC and with the land use permit agreements with MNR. The difference is that this would put it into legislation. But again, it would only be enforceable within certain areas where the LUP is in place.

**Mr Clark:** So it won't be on all crown land, then; it's just going to be designated areas.

**Mr Spina:** Designated trails.

**Mr Clark:** I have a problem when people stop me out in the middle of nowhere and start asking silly questions.

**Mr Spina:** You can be out in the middle of nowhere and not have to worry about that, Ian. Like the unorganized snowmobilers that made a presentation earlier today, if you're not on an OFSC trail, you don't have anything to worry about.



**Mr Clark:** OK, good. I've been asked some questions before. I don't know, it's supposed to be a free country. I'll ride around, as far as I'm concerned, where I want to ride around.

**Mr Spina:** I've been on the trail and I've been off the trail, sometimes not intentionally, but I understand. I was born and raised in Sault Ste Marie. I know that's southern Ontario from here, but at least it's northern Ontario for the guys in Toronto. I've been out on the trails. In fact, I cracked up in Ignace two years ago.

**The Chair:** And hobbled around Queen's Park for some time after that.

**Mr Spina:** We don't want to talk about that.

**The Chair:** Do you have any other closing comments, Mr Clark?

**Mr Clark:** What's the time frame on this? When is this going to come into effect?

**The Chair:** This is the first day of hearings. We've committed to five days for hearings. I said at the start of this afternoon's session that it's somewhat of a unique circumstance. We only started doing it this past spring for the first time in the history of Parliament that we hold hearings after first reading, which is basically just the introduction of a bill. It's before, traditionally, the parties have hardened their positions and pretty well decided where they're going to be on the bill, as Mr Christopherson suggested earlier. By going out before we come back to the Legislature for second reading, none of us have to take any hard or fast positions. There's no right or wrong. We can listen to people who are directly affected by the bill, such as yourself, and take those comments back and make the changes. I'm pleased to say that all of the bills that have done that so far—I think Mrs Bountrogianni would back me up even on things as significant as the new mental health act—saw significant changes as a result of going out after first reading, and probably a far more pleasant working environment during the debates and back in second and third reading because of that.

It's important for us to get views up front from people like yourself. We hope in those five days we'll be able to reflect enough changes so that when the bill then goes to second reading, all parties will be in support of it. As Mr Christopherson, the House leader for one of the three parties, suggested, the better the job we do here now, the faster this bill could sail through the Legislature, with all-party support potentially.

**Mr Clark:** So this could be in action this winter?

**The Chair:** It's a possibility, yes, but normally when legislation is passed you would give adequate notice. I would think in a case like the snowmobiling season almost being upon us now, that probably would not be a reasonable course of action. You would probably see the ministry give a full year. We can't say that because there's no guarantee what day it would go through the House at all. All we can control is when it goes back to the House after these hearings, and that would be September 25.

**Mr Clark:** OK. Thanks for your time. I don't have any more questions.

**The Chair:** Just in the interest of fairness, because I don't want anybody to have come in late and been missed, we had three individuals or groups whose names I'm going to call one last time: Jeff Ferguson, Rod Bergman, and the Lake Superior-English River Bait Association. Have any of them come in belatedly? They haven't.

**Mr Brown:** I have a couple of more inquiries that perhaps the researcher could look into.

**The Chair:** Please. This is the appropriate time.

**Mr Brown:** I wonder if there's an estimate of what revenue the province gets from registration fees for snowmobiles and the amount of revenue dollars we receive from the sale of gasoline and other petroleum products for snowmobiles. I don't know if there is, but if we could find that out, it would be helpful.

**Mr Christopherson:** Further to that, Chair, maybe an inquiry with the OPPA as to whether they have taken a position with regard to enforcement: who should do it and what resources it takes to do it adequately.

**The Chair:** Indeed.

**Mr Brown:** The other thing, if we can keep Lorraine busy, would be if the OFSC has any estimate of how many riders are on its trails who do not at present buy trail permits; in other words, how many offenders there are out there, in their estimation. I'm trying to figure out how big a problem it is we're trying to solve.

**The Chair:** If at the same time you want to do the math as to what that would mean in lost revenue, it might be appropriate to find out how many registered users there are as well.

**Mr Brown:** That would be useful to know. Many of the registered users would not be using the trails.

**The Chair:** The second-last presenter commented that there were a number of different revenues to the province from trapping, over and above the licences. I wonder if you could get an idea of what the various fees and licences are that trappers pay. I would appreciate that, personally.

**Mr Spina:** Would it be worthwhile to indicate the ministries that have been present in the internal discussions in drafting the report which is available? I'd be happy just to list the ministries that were involved in these discussions to date.

The most obvious, of course, were the Ministry of Transportation, the Ministry of Tourism, the Ministry of Natural Resources—I've got to think through all the ministries here—the Ministry of Health, the Ministry of Northern Development and Mines—

**Mr Christopherson:** Solicitor General.

**Mr Spina:** Solicitor General. We have had the superintendents from the OPP present at many of our meetings.

**The Chair:** Did you have municipal affairs?

**Mr Spina:** Yes, municipal affairs. I think that runs the gamut pretty well. Those are the main ministries that were involved in the discussion about all of the possibilities, all the options and all of the elements that should

be addressed or at least discussed in the process of developing this bill.

**Mrs Bountrogianni:** Given that we're summarizing, Lorraine, I'd like to remind the committee about my inquiry for Penny Todd on how safety would be enforced under this bill.

**Mr Spina:** Yes, there are elements in there that address that. We do need more detail, and that's in process.

To address David's question, the OPP is just trying to come to grips with how this may or may not impact on them, mostly financially. There was a budgetary allocation in the spring budget. It's a question of whether some of those dollars would be allocated toward this or whether it comes out of some other source. Those are all things that are currently being explored.

**Mr O'Toole:** To follow up on the trapping and licensing exemption consideration, I'm just wondering, because they're all licensed, would it be important to first know the number of regions that would be affected by this and then the number of trappers? Then you could

deduce what the revenue cost is. Since they're all licensed, it would be fairly simple to get that number.

**Mr Spina:** It has been discussed and it's available.

**The Chair:** We're not normally that free-form in our discussions, but having had a few minutes freed up by having two presenters not show up, we have taken not only your comments but will have the legislative researcher pulling up all the background data that makes us even more fluent on this subject in the next couple of days.

I want to thank everyone who took the time to come out to the hearings, both the presenters and interested constituents, people who have an interest in hunting, trapping and snowmobiling. You will see on the Internet all the bills and changes listed, but I'm sure we could arrange to send copies of the final legislation and any regulations out to anyone who is registered with the clerk.

With that, the committee stands adjourned until tomorrow in Thunder Bay.

*The committee adjourned at 1604.*











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First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 30 August 2000

# Journal des débats (Hansard)

Mercredi 30 août 2000

**Standing committee on  
general government**

Motorized Snow Vehicles  
Amendment Act, 2000

**Comité permanent des  
affaires gouvernementales**

Loi de 2000 modifiant la Loi  
sur les motoneiges

Chair: Steve Gilchrist  
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Président : Steve Gilchrist  
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 30 August 2000

Mercredi 30 août 2000

*The committee met at 1303 in the Valhalla Inn, Thunder Bay.*

MOTORIZED SNOW VEHICLES  
AMENDMENT ACT, 2000  
LOI DE 2000 MODIFIANT LA LOI  
SUR LES MOTONEIGES

Consideration of Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement / Projet de loi 101, Loi visant à favoriser la durabilité des pistes de motoneige et à accroître la sécurité et les mesures d'exécution.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'd like to call the committee to order as we commence our second day of hearings on Bill 101, the Motorized Snow Vehicles Amendment Act, 2000. We're pleased to be in Thunder Bay, our second stop in northwestern Ontario, and we're pleased to be joined here by a couple of our colleagues from the north.

## TOURISM THUNDER BAY

**The Chair:** I am told our first presentation, Tourism Thunder Bay, is ready to go. Could their representatives come forward to the witness table. Good afternoon and welcome to the committee. It's good to see you again.

**Mr Ken Boshcoff:** It's good to see you. Welcome to our city, our region and our district. At the outset, I must thank you for having these hearings to allow the public to have a say. I know that we in Thunder Bay and the surrounding area are very pleased that you have included us to hear the divergent viewpoints, and we appreciate that very much.

My name is Ken Boshcoff, and I'm the mayor of the city of Thunder Bay. With me today is Pat Forrest, our manager of tourism. We're here today to express the view that a new source of sustainable, operational funding for snowmobile trails in and around our community is urgently required and that we believe Bill 101 will provide that sustainability.

Tourism is already our community's second-largest industry, but to date most of this economic activity, in its importance, has occurred during the summer months. There is, however, tremendous potential to develop our winter tourism, and snowmobiling holds the key to that potential.

There is considerable public support to establish Thunder Bay as a national sports capital. Our track record is impressive. Thunder Bay has already successfully staged numerous high-profile events including the 1994 World Nordic Ski Championships, numerous national curling, diving and swimming events, Skate Canada, the Canada summer games in the 1980s; innumerable national children's events of all kinds and international soccer tournaments, and indeed our reputation for organization and hospitality is exemplary. I could go on and on, but I think you get the point.

We believe that snowmobiling offers great potential to become a key component of a major winter sporting event in our community. We have already been approached by other communities that would like to join with us to stage city-to-city snowmobile events. With so much support already in place, all that is needed to make this work is committed volunteers and great trails. You would actually be amazed at the frequency with which people approach us to join with them in staging winter events such as this, and also snow-machining aficionados who have great plans and ambitious ideas to do this. So we know the organizational capability is definitely available.

We have tremendous admiration for the work of our local and regional snowmobile clubs. In our community, where volunteerism flourishes, the work of these dedicated people stands out. I know they would be delighted to work with us on such an event if they had the time and resources to do so. Until now, however, almost all of their energies have been focused on raising funds to keep the trails open.

The citizens of Thunder Bay, and visitors and tourists alike in the winter, have to commend Thunder Bay Adventure Trails for building the system to the high state at which it now is. They have laboured long and hard over the past number of years, not only through fund-raising but through community hearings involving the community and the district, and now we believe we have a very fine system. If we can let them operate it without the burden of always having to be dependent on the vagaries of the weather, then I believe that indeed we can get somewhere.

That's where we feel Bill 101 will bring financial stability to our clubs and provide them with more freedom to work with us to develop winter tourism. I know today that the actual mechanisms of funding are going to



be discussed. That is not really what we are trying to influence, but we do know that many of the groups and organizations have expressed concerns to us in our tourism department and to city council, and we only hope you will be fair with them and give them justice.

We thank you for hearing our concerns. We know you understand the tremendous potential that snow-machining and the trail system have, not only for north-western Ontario but indeed for our whole province, and we know that the potential for us here has not even begun to become realized. We are asking for your assistance on this.

We congratulate you and the committee for your work on Bill 101. It is an important step forward.

1310

**Ms Patricia Forrest:** As Mayor Boshcoff mentioned, my name is Patricia Forrest and I'm the manager of Tourism Thunder Bay. Tourism Thunder Bay is a city division, and it's responsible not only for tourism marketing and visitor services but also for tourism development. As such, we have worked closely with our local club, Thunder Bay Adventure Trails, over the years.

I have been in my position for the past 10 years, and throughout these years I have had the privilege of working with the numerous volunteers of our local and regional snowmobile clubs. It's been my observation that the clubs have faced tremendous obstacles in their struggle for sustainability. I have shared their frustration as they've worked so hard to find the resources that would enable them to complete the trails network and to keep them open and safe.

Thunder Bay Adventure Trails, our local club, has also consistently demonstrated a huge commitment to tourism. Though the development and maintenance of tourism trails has placed a huge burden on them financially and also on their volunteers, they have always strived to work with us to advance snowmobiling tourism, and that has been greatly appreciated.

There are hundreds of thousands of snowmobilers in the US Midwest and other key market areas who would love to take a snowmobiling vacation in our city and region if we had the trails built and if the clubs had the resources to keep them groomed. As Mayor Boshcoff mentioned, tourism is our second-largest industry. Our new long-range tourism strategy, Giant STEP II, pointed to snowmobiling tourism as one of our very highest-ranked products, provided again that the necessary network of trails was in place and that they were able to be groomed consistently.

This year our local snowmobile club had an especially difficult time financially. Mayor Boshcoff alluded to problems with the weather. I think we only had about four weeks of good snow. They are very vulnerable to that, and of course sales of permits were down. Tourism Thunder Bay made the decision this year to actually divert money from our marketing budget into the club to help them groom the tourism trails and keep the trails open. This was a really radical move for us, and one we would have preferred to avoid. However, it was plain to

us that if we did not divert money from our marketing budget into the trails to help keep them open, we wouldn't have anything to promote anyway. So we now have very little money left to promote winter tourism. We are confident that this was the correct move but one we hope we wouldn't have to make again.

I am hopeful that Bill 101 will enable us to put our tough times behind us and work together to successfully promote snowmobiling and winter tourism. I'm aware from my discussions with the local club that there are still a number of concerns and outstanding issues to be resolved. I hope these can be resolved quickly so that we can get on with the business of building a vibrant winter tourism industry.

I thank the government for its interest in tourism in general and snowmobiling in particular, and I thank the hearings committee for allowing me the opportunity to present my views.

**The Chair:** Thank you both. That leaves us time for one quick question from each caucus. This time we'll start the rotation with the Liberals.

**Mr Michael A. Brown (Algoma-Manitoulin):** I am just delighted to have you here this afternoon. Yesterday we were in Kenora. One of the issues that was raised by the groups in Kenora was the uncompetitive nature of pricing for snowmobile trails in Ontario versus pricing in Manitoba, Minnesota and North Dakota. They presented a lot of numbers that said that folks were not coming here to our part of the world because of the fees; I think they were something like \$10 in Minnesota. Of course, in Minnesota, gas tax revenues from snowmobiling are given to the snowmobile clubs to assist them.

I wonder if you believe our present pricing under this situation is conducive to accomplishing the goals you've just outlined.

**Ms Forrest:** Our experience with the US snowmobiler is that I think there's a trade-off in that their trails are quite congested. They don't have a lot of the scenery that we do, and again it offers a different experience for them. So there is a bit of a trade-off in that they appreciate the lack of congestion on the trails.

We've had a fair bit of success in marketing to US snowmobilers. We've had some problems in that we have a difficult link south; it's not a very direct link, so again we're not enjoying the benefits we might because of the trail not being completely in place the way we'd like to see it. But the comments we have from American snowmobilers are that they really appreciate the fact that the trails are not crowded and that it offers a different product for them.

**Mr Boshcoff:** Northwestern Ontario essentially has to turn its distance factors into opportunities. That probably is reflective of much of the costing part of this. What we hope to do, not only in Thunder Bay but throughout northwestern Ontario, is ensure that the infrastructure is attractive enough—that is, the hotels, the restaurants, the entertainment and the nightlife—to compensate for any of those pricing things so that they have a quality experience. We believe that, with the co-operation you've



seen in northwestern Ontario, the potential is great for doing that.

**Mr Gilles Bisson (Timmins-James Bay):** I hail from the city of Timmins, so I well understand the importance snowmobiling plays in our local communities when it comes to the dollars brought into those communities during the winter months.

I'm only concerned about one thing. I understand why we're doing this. There's no general opposition to mandating the permits when riding on OSFC trails. I heard in your presentation that you see this as a way of being able to strengthen the amount of money clubs will have to build trails, but I don't think this is going to generate the kind of revenue we really need to make sure we are able to give the clubs the dollars they need to develop the trail system that we can then go out and enjoy. I think you alluded to that in your presentation. You said that the city actually put some money into the trails, which is not normally the circumstance. We don't see a lot of that, so I commend the city.

I'm wondering if you have any numbers, or any idea of the numbers, that Bill 101 will generate. I still believe the government is going to have to play a role in providing money directly to the clubs on top of what's happening with Bill 101. I hope you're not arguing that we don't need that other pot of dollars. I hope that's not what you're saying.

**Mr Boshcoff:** We'll clarify that that is exactly what we are not saying.

**Mr Bisson:** OK. I just want to make sure, because these guys have a way of reading what you said.

Just one quick comment: Is it their fault we had no snow last winter?

*Interjections.*

**Mr Boshcoff:** For the record, Mr Chairman, the weather is a federal matter.

**Mr Bisson:** I'm with you on that one.

**The Chair:** I'm sure Hansard got that.

**Mr Garfield Dunlop (Simcoe North):** A quick question: When you're talking in your report about making it more of a sports capital of Ontario, have you done projections or studies to back what you want to say as far as the numbers you made that it might be possible to bring into this area during a perfect season?

**Ms Forrest:** How many we could attract to a major sporting festival?

**Mr Dunlop:** In a perfect world, with good weather all winter and good marketing—

**Ms Forrest:** How many snowmobilers would come if we had a good season? Is that—

**Mr Dunlop:** Yes.

**Ms Forrest:** Yes, the local clubs have projections of that. I don't have them with me right now, but I know we fell short in our tourism numbers in the past couple of winters, having to do with incomplete trails and lack of snow. But yes, the clubs can give you that information.

**Mr Boshcoff:** Recognizing that if we agree that weather is a federal responsibility, the solution to attracting people is a partnership concept. The province and the

municipalities have a great deal of opportunity in combining. So when a municipality such as ours sets a goal of wanting to be a sports capital, based on a long record of organizing, of achievements in many different sports from hockey to curling to anything you can name in the winter, including ski-jumping and cross-country skiing, it also combines with what we are calling our city of festivals idea, that there is a lot to do in our community.

Through the Northwestern Ontario Municipal Association, we've also begun to do some regional partnering in terms of identifying the region in that festival sense, which means that although we've already got many activities from April to October, the more we can generate in the wintertime will give us that kind of balance. We view the potential of snowmobiling as essentially untapped and, at this stage, unlimited. We have the entire infrastructure for tourists considerably underutilized in the winter months.

**The Chair:** Thank you both again for taking the time to make your presentation and kicking off our hearings here in Thunder Bay. All the best.

**Mr Boshcoff:** Please enjoy our community.

**Mr Bisson:** As of today, you can bet on it.

**The Chair:** I'm sure many more people will be enjoying Thunder Bay's hospitality.

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## TOWN OF BEARDMORE

**The Chair:** The next presentation will be from the town of Beardmore. We have august presentations here today: two mayors in a row.

**Mr Eric Rutherford:** Good afternoon. Before I begin I will give you a little memento, so that you'll know where Beardmore is. This is a snowman pin.

Members of the committee, I thank you for this opportunity to come forward and address you today. I might recommend, though, that you get a map of Ontario up somewhere. As a retired teacher, we always have to have our concrete materials so we know where we're focusing. I have one here, a road map, so if we do need to refer to it, we can.

The situation I'm bringing forward today is indicative of the town of Beardmore. My town is a community which is about 18 miles long and six miles wide. It does contain some snowmobile trails.

I'm mayor of that town, but I'm also coming forward as a transition board member of greater Greenstone, which may or may not be the community that will be involved in the near future, depending on the outcome before the Supreme Court of Canada. That new community will be 120 miles long and about 36 miles wide. Seeing as we don't have a crosstown bus, the snowmobile might become a very important method of transportation and the trail network will take on an additional perspective.

I think I can speak on behalf of small-town northern Ontario. We have troubles in smaller communities organizing the clubs and having the criteria to have them go



forward. I believe it's a 50-member obligation to come forward with before you have a legitimate club that will be recognized and, in turn, can apply for the funds for operation of a groomer and things like that. We do have a small group of volunteers in our town who have worked hard at maintaining a local trail network, which is very pleasant to travel on, but we are located on what we call the missing link. That's the TOPS trail link between Nipigon and Geraldton. If we were up and running as a legitimate club, we'd have at least 100 miles that we'd be responsible for grooming, because the link between those two communities is greater than 100 miles.

I say to you, as members of the committee, there has to be some special consideration in place for the smaller community places on the map with big areas of responsibility. Just as the MTO maintains highways 11 and 17 through the great distances of the north, we'll have to have some special trail maintenance or dollars so that those gaps can be filled and properly serviced for the use of all the citizens of Ontario or Canada or North America. I suppose those from Europe will be attracted to this area, too, if we have a good trail network up and running.

In point 3 in my presentation I outline the importance of the local, the district and the provincial picture. The corridor along Highway 11 between Thunder Bay and North Bay is one we've really got to get into place running properly, because we will be able to funnel people through that area in both directions. It's one that many of our municipal politicians—in fact, I dare say all of them—really want to get involved in supporting. We realize fully the potential that that link can offer to us.

I outline in our regional picture, too, that we do have Lake Nipigon, which Beardmore is the gateway to, which is 90 miles long and 45 miles wide and has four feet of ice on it that doesn't melt until May. I think Joe was down just when it melted one year. There is a snowmobile opportunity for people to really experience on that body of water, and well past the season when everything else has melted.

In my fourth point in the presentation, I outline my points about Bill 101 and I ask: Will it solve the problem or does it create a problem? While it may be fair in the south, I don't think it is in the north and here are my reasons why. I might be off base in some of my thoughts, so tell me if you think so.

My initial thought is that the fee is a little too high. If we want someone to come through that door and we're going to charge them \$150, they're probably not going to come through the door. But if we charge them \$25 to come through the door and get them onside inside, then we can realize the extra dollars we might need afterwards. That's my point there.

I really strongly feel that our volunteers have been doing a great job trying to maintain these trails, but they're working to their limit right now. The work they do is to the benefit of others, and even to charge them that high fee I don't think is fair. Many trail users are from outside the area, and I don't fault them for coming

into our area, in fact, we welcome them here. But I stress that point.

I feel that the Ministry of Northern Development and Mines—and here I put in the point, let's change the word "development" to "survival", because I think it gives us a truer picture of that ministry and what it's trying to do. I think of it as the ministry of northern survival and mines, because the north is in tough times and this ministry has to come through to help it. I feel that that ministry should be partnering with municipalities to fund and assist more directly with the operation and maintenance of the trail network. Perhaps I'm off base when it comes to the bigger cities, but I think I'm on base for small-town northern Ontario.

Small northern clubs do not meet the membership requirements for recognition and funding by the OFSC. I've said that already. This, in turn, allows them no chance to purchase equipment such as groomers to carry out their work.

In point (g), I outline that operation costs far exceed any membership revenues. If you've only got 10 or 12 people in your club, the revenue from the membership sales doesn't amount to much.

Trail user fees are paid by visiting users at other points of entry and don't go to clubs conducting necessary trail maintenance. I think that's maybe a problem facing a number of places across the north, where visiting groups of hundreds of snowmobilers are paying their fees, but we have to get it back to the areas they are actually snowmobiling in.

While we can construct and maintain our local trail network, we need help with the TOPS trail network. I am saying that on behalf of Beardmore; that's the main trail going through.

In point (j), I outline that extra duties of acting as trail wardens are difficult in small-town settings, where if you have 10 or 12 members and they have to go out and chase or arrest or charge their friends, you create a scenario that's negative rather than positive. We're trying to welcome people on board and get them to pay their fees in a voluntary fashion.

I've outlined some solutions on the second page. I say in point 1 that a lower trail permit for northern residents similar to the lower northern vehicle licence fee of yesteryear, eg, \$35, might be in order.

In my second point is the flow of funds from large southern clubs to smaller northern ones. If you have a club with thousands of members, they are realizing many thousands of dollars, and they're having a good time spending it and are probably spending it properly and appropriately. But perhaps there is room for some of those extra dollars to slide into the north, where they are really needed.

In my third point I am recommending special funding for crucial link communities on the TOPS trail, such as Beardmore. For example, I say that the province could fund a groomer, new or used, to be stationed in Beardmore, which, in turn, would be housed and fuelled



by the township of Beardmore, and then the volunteers would put it to use keeping and maintaining the trail.

I really feel that municipalities have to partner in this. We do this when we operate arenas. We don't expect our hockey team to build the arena, but when it comes to using the arena, we expect them to pay a fee for the service. I think we can look at this in a similar fashion.

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My fourth point is short-term trail permit dollars distributed to clubs along the routes used by the holders. If we have visitors from out of country, let's find a way of passing the dollars they spend on their permits back to the communities they travel through.

In my fifth point I recommend a positive approach. Let's put the trails in order and then pursue user-fee increases. We still have some building to do out there. There are challenges, be it with bridges or with the grooming of the trail itself.

I also flag the negative news ad campaign in regard to the illegal use of trails. It's possibly creating a backlash from a number of snowmobile trail users. If we continue to advertise and threaten that you will be charged or arrested, this seems to get people's dander up. I think we have to try to bring them on board rather than challenge them in a negative fashion.

I also look to more direct support from MNDM, the Ministry of Tourism, the MNR and the MTO. All these agencies can help out, whether it's MTO planning their bridge crossings for highway traffic to also be able to carry snowmobile traffic or MNR providing assistance in mapping and layout of trails and helping with the issues. Tourism, of course, is always there to bring us forward when it comes to advertising the area and the region, and MNDM with their funding.

In closing, I say that we are facing volunteer burnout problems due to overwork and worry, because there is a hell of a responsibility that our snowmobile members are putting on their shoulders when it comes to maintaining that trail network. Why should they carry the whole load—desperate fundraising in order to carry on? They actually spend their whole year just trying to keep things rolling and going, and this causes the burnout.

Snowmobiling itself can turn the economy of the north around. For the town I reside in or the sister communities of the region, we know that well. Provincial and municipal governments have responsibilities to see this through. I recommend that a joint committee be formed to address this challenge and perhaps support the snowmobile groups in their endeavours. It could consist of representation from the following sectors: the provincial government, municipal governments, OFSC and general public representatives. Also included in there should be the First Nation community, because we are travelling adjacent to or through many reserve areas and there is a chance for those groups to realize revenue just as well as the municipalities.

I thank you for your time, and I'll entertain any questions you have.

**The Chair:** Thank you, mayor. We have time for a relatively quick question from each caucus. This time I'll start with Mr Bisson.

**Mr Bisson:** Thank you very much, mayor. Let me get to the point, because I have the same problem in Timmins-James Bay in regard to smaller communities that don't have the membership base to get TOPS funding through the OFSC system.

The question I have for you is: Are you suggesting that the government should amend the legislation to either force the OFSC or find a way with the OFSC to lower the threshold so that they can become clubs and get some of the money they need to buy groomers and do the kind of work we need to do, or do you see that more the responsibility of northern survival and mines? I'm starting a trend here with you.

**Mr Rutherford:** I would say northern survival and mines can get in there initially, because they have funding they can bring into the picture to allow things to happen. The OFSC is already overburdened with the general operation of the system, and I haven't found a negative person there yet. In fact, we've got some excellent support from Tom Quinton and others as we've tried to go forward with our endeavours. So they're onside.

I think we've got to get together and see where we can wiggle this through to solve the problem in the missing link or missing links.

**Mr Bisson:** So it would need to be some form of special program within northern survival and mines to fund the smaller clubs and not to burden TOPS or the OFSC itself.

**Mr Rutherford:** Something like a strategic groomer stationed in a small community setting, subject to recall if something breaks down somewhere else in the system. But rather than having it in Sudbury, it could be in Beardmore.

**Mr Bisson:** Where is this town Sudbury?

**Mr Rutherford:** I'm not sure, sir.

**Mr Bisson:** You're trying to forget that one.

**The Chair:** It's down south.

**Mr Rutherford:** There is a large groomer distributor located there.

**The Chair:** Thank you, Mr Bisson. Mr Spina?

**Mr Joseph Spina (Brampton Centre):** Thank you, Eric. Good to see you again. Thank you for, yet again, another snowman. I want to ask you: Did you paint the one on the side of the town yet?

**Mr Rutherford:** We have a new snowman constructed and we have a 30-foot-long "Gateway to Lake Nipigon" sign that you're going to have to come down to see before the snow flies. That gives you four weeks to get there.

**Mr Spina:** You're planning for a long snow season, Eric.

What I wanted to ask you was regarding a couple of issues. One is the fee structure, particularly to promote tourism, and the other is funding for operations for northern and smaller clubs.



The first question is with regard to the fee structure. Do you think a more flexible fee structure would help? I think there's a one-day permit now. There was a seven-day permit, and I know at some point there was a three-day permit. Do you think those would help at all in promoting tourism, Eric, because obviously a one-, three-, five- or seven-day fee would be a reduced fee from the full year?

**Mr Rutherford:** It could when you're bringing people in, but I'm looking at the people in the community itself. We have a mixture of seniors, trappers, young people and First Nation people, and if you want those people—say the 20 or 30 who are going to become the backbone of your club—to come out and work and charge them \$150, then they're not too excited about it. But if the fee is within reach, then they don't mind paying it and also working. When you join a small club, you're really taking on work, where if you join a golf club or a curling club in a large city centre, it becomes a very relaxed atmosphere that you enjoy because there are many people to do the jobs. But in the north, we have to do all of them ourselves.

**Mr Spina:** So if we were able to generate enough revenue within a mandatory permit structure to help sustain the trails and also, perhaps, help to reduce the amount of volunteer burnout—in other words, reduce the amount of volunteer time—and maybe have some cash to help pay people to groom the trails, would that go towards achieving the objective?

**Mr Rutherford:** Yes, it would, but I still feel we need the lower fee to get things up and rolling. Then, if we provide a quality service, we can perhaps expect a higher amount of revenue from it afterwards.

**The Chair:** Mr Gravelle.

**Mr Michael Gravelle (Thunder Bay-Superior North):** Two quick questions, if I may, Mr Rutherford. The \$150 fee: you've pinpointed, quite frankly, really well a number of the concerns that are out there about the legislation and what isn't there. What do you think will happen if they don't adjust the \$150 fee? Most people think it's very excessive. We know we can drive our own vehicles across North America for much less than that, so this is a huge fee. Just in terms of your own community, what do you think will happen if that fee is maintained at \$150? Do you think everybody will pay it, or will people just ignore it?

**Mr Rutherford:** People will ignore it, and the snowmobile club that currently exists in our community, which is not recognized by OFSC, would not charge that fee. They would probably levy a \$10 or \$20 fee, and the people paying that fee would use the trail network they've maintained. If there was a TOPS trail going through, they would probably just chug along on it as well, and someone from a faraway town would have to come to arrest them.

**Mr Gravelle:** That is why I asked the question. I've had a lot of people express to me the concern that they won't be intending to pay at all.

**Mr Rutherford:** What it does is create a negative. We're wasting our energy fighting over this and doing nasty things instead of saying, "Everybody, let's get together and do it," rather than squabble over this—

**Mr Gravelle:** And you think that could perhaps be accomplished by having an adjustment in the fee structure or some adaptation as well for the traditional users, I presume?

**Mr Rutherford:** Yes, I think it could. Then, when people are on board and the positives start to roll, we will have a real functioning organization we can be proud of.

**The Chair:** Thank you, Mr Gravelle, and thank you very much, mayor, for taking the time to drive down and make your presentation. We appreciate it very much.

**Mr Rutherford:** In closing, I say to this committee that if you're still underway during the winter months, it would be really great to plan a snowmobile trip from Kenora to North Bay, which you could head up. And as you travel across the north, various municipalities and clubs could join the entourage. We could really make some hay out of this and advertise that fact. Perhaps if we started in Kenora and got to North Bay with actually thousands of people, maybe the Premier of the province would even greet us there and host a dinner. So think of that. Thank you, sir.

**The Chair:** Thank you.

**Mr Brown:** Mr Chair, just a question for the ministry, if we could just have them research it for us. I would like to know how many more permits they believe will be sold under the mandatory system.

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## TOWNSHIP OF SCHREIBER

**The Chair:** Our next presentation will be from the township of Schreiber. Mayor Krause is our third notable luminary kicking off our proceedings here today. It's good to see you. Welcome to the committee.

**Mr Bob Krause:** Good afternoon. I'd like to thank you for allowing me the opportunity to speak to this bill. My name is Bob Krause. I'm the mayor of Schreiber, and this is Jeff Dicaire, who is our economic development coordinator. For those of you who don't know where Schreiber is, it is 200 kilometres east of Thunder Bay on Highway 17. It appears that we're left off the map all the time lately. They don't seem to want to have us there, but we holler loud enough and I'm big enough that they get to know where we are anyhow.

I would like to thank this government for their interest in snowmobiling, as it has become such a large industry in Ontario, especially in the north. Here in the north, we are becoming ever so dependent on tourism for our survival, and being able to promote our area year-round has been helpful. Tourism, at one time, was just in the summertime, but now it's becoming year-round. I can foresee that we will be having our tourist information centres open year-round as well. It's very important what snowmobiling is doing to us.



Schreiber is in the planning stage of building a large interpretive centre. Our interpretive centre is to the tune of about \$13 million, so it's a large project, and it will be a summer and winter operation. One of the aspects taken into consideration for the location of this centre was the TOPS trail, which runs right by the interpretive centre. The TOPS trail was built by the Lake Superior Family SnowGoers, who have put thousands of hours into it. They've done an excellent job, and we've taken advantage of trying to locate our interpretive centre right alongside of it. It'll be running right by us. That indicates the importance of snowmobiling in our community.

I believe it is time for the government to take a more active role in helping maintain the trail system that has been built, with government financial help, by the thousands of volunteers across the province. For the marketing efforts to continue there must be a continued influx of funding dollars to balance the effort from the volunteers. We must also ensure that any revenue derived from proposed mandatory trail permits continue to be spent on trails for safety and sustainability reasons.

You definitely have a challenge ahead of you, as you must ensure that the system is put into place to ensure the sustainability of our trails while keeping it affordable and fair to all parties—local snowmobilers and tourists alike.

Northwestern Ontario is fast becoming known as a snowmobile haven, and if all parties do not work together to make the industry attractive and sustainable, we will be left behind in an industry that can provide such an economic spinoff to our communities. I don't think the magnitude has been anticipated. Snowmobilers contribute a great deal of dollars to our local economy by purchasing fuel, staying in motels, eating in restaurants etc, and this bill must address the problem facing the industry and help to get over the hurdles facing us.

Here in northwestern Ontario, we have some of the most beautiful, yet challenging, terrain in which to build and maintain trails. For that reason we must ensure that the permit dollars received are distributed equally to all regions.

The volunteers who have created these trails now require the support and partnership of the government, and you must work together to ensure the sustainability of these trails for all to enjoy. The trail system is there now, and we need to take advantage of benefits by having everyone work together. This will become a major attraction for the province and its people to be extremely proud of.

The proposed legislation is a good step in the right direction and I'd like to thank you for providing me the opportunity to come here today.

**The Chair:** That leaves us lots of time for questions. This time the rotation will start with the government, Mr Dunlop.

**Mr Dunlop:** Thank you for coming so far to make this presentation. By the way, Schreiber is on the snowmobile map?

**Mr Krause:** It was left off when they brought forward the work that they were doing up in northern Ontario. As well, it was left off of a couple of tourism maps.

**Mr Dunlop:** Just a couple of very quick questions. One, you mentioned your interpretative centre?

**Mr Krause:** Yes.

**Mr Dunlop:** I was wondering if you could explain how that was funded, and second, I'd like to know how you feel about the fees for the OFSC.

**Mr Krause:** The interpretative centre that we're planning on is in the planning stages and we're now out trying to look for dollars. I believe Jeff here can elaborate a little more on that.

**Mr Jeff Dicaire:** We've just completed the feasibility study for our interpretative centre which has declared that it can be feasible and sustainable to run on its own, so we're out lobbying the heritage fund right now. The feasibility study was funded in a joint effort by Fednor and the heritage fund. We're obviously approaching those people at this point in time, as well as some private investors, so that we can try and put our ducks in a row to get going on this. We understand that tourism is important, as everyone has been reiterating, and that's one of the aspects that we're hoping to take advantage of, along with the heritage locally that we have in the railroad industry and some of the marine heritage and everything else that happens in northwestern Ontario.

**Mr Dunlop:** Sorry, I thought it was already under construction. You're looking for funding now?

**Mr Dicaire:** We've got the site. The site has been chosen, and now we're going after the funding to get it done.

**Mr Dunlop:** The other question was: I was wondering how you felt about the permit fees that are in place?

**Mr Krause:** The permit fees: I feel that they are going to have to try and keep them under control, because in small communities, as you know, snowmobiling is very important. We have a lot of people who have three or four snowmobiles. You have one for yourself, your wife and two or three kids. They all might have a snowmobile, because we can leave my house, go out the back door and I'm gone. That's pretty costly snowmobiling for a family if we had to buy a permit for each machine, so the permit fees have to be kept where you can afford to buy several permits in one family.

**Mr Spina:** Thank you, Bob, for coming forward today and giving us your comments.

With regard to the fees, right now, as you know, the fees are set by the federation at their annual general meeting on a vote by the 200 delegates of the 281 clubs at their convention. If the province becomes involved in the mandatory permit status or issue, as is part of this bill, the minister will have the final say as to whether those fees are acceptable or even set the fee. That's the way the bill is worded now. Do you feel that the federation should retain that autonomy to create those fees at their annual general meeting with the approval or not of the minister?



**Mr Krause:** The minister and the federation are going to have to work together to set these fees. I believe it's not one-sided; they should be working together to do this.

**Mr Spina:** There's currently an equalization formula for distribution of some of the funds that the federation has from some of the wealthier clubs to some of the not-so-wealthy clubs. Do you think that this formula is working right now? Do you have a feel for that at all?

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**Mr Krause:** I couldn't say at this time.

**Mr Spina:** Thanks, Bob.

**The Chair:** Ms Bountrogianni.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Thank you for your presentation.

Yesterday in Kenora, we heard a lot from trappers and other traditional users of the trails who felt that it was unfair that this fee of \$150 be applied to them. They felt that there shouldn't be any fees applied to them, or a very minimal fee, because they built the trails in the first place, and for various other reasons. What is your opinion on that?

**Mr Krause:** I believe that the people should be able to continue to use those trails that they have already built. Now, if they're using the trails that are built by the snowmobile clubs and what have you, then they would have to pay toward that fee.

**The Chair:** Mr Gravelle.

**Mr Gravelle:** May I say, just in terms of Schreiber being left off the map, it actually happened three times. I think it's a good opportunity to have the government members here to explain that it really was establishing a tourism map: the minister's up here to announce highway construction and leaves Schreiber off the map, and other communities as well. I hope that won't happen again. I think it's something that we have to keep talking about it. It's a shame we have to keep talking about it.

**Mr Spina:** Thanks for the promotion, but there's nobody here in cabinet, Mike.

**Mr Gravelle:** But I know you have a great deal of influence, and I'm sure Mayor Krause won't mind my making reference to that because it upset us all.

How important, in terms of Schreiber in the region, is snowmobiling in terms of your community? Can you give us a real sense of that, what impact it has on your community?

**Mr Krause:** Snowmobiling is very important to us, and it's going to be especially important in the future. Motels in the wintertime drop off because of tourism, and snowmobiling will help these tourist outfitters, and what have you, continue to survive.

We had a case a couple of years ago where some people came into town snowmobiling for a couple of days. We welcomed them, took them out and showed them the trails. It wound up they stayed for a week, went home for a couple of weeks, came back and spent another three weeks snowmobiling around Schreiber, where they bought gasoline, ate in the restaurants and stayed in the motels. It's stuff like that that's going to make or break

some of these places that depend on tourism and it's very important.

**Mr Dicaire:** Just to drive that home a little bit, some of the local business people are seeing enough of an advantage that one motel owner has already set up a barrel sauna in his parking lot with a hot tub. Looking at catering specifically to snowmobilers has really been a strong part of their marketing plan. They're building a shed at the back so that the snowmobilers can come in and work on their machines in a heated environment when they're coming through. The businesspeople are starting to see the advantages and the benefits that can be derived from snowmobilers coming through. As we said, the TOPS trail runs right through our community so we're a natural. We're just a nice distance away from Thunder Bay to make it a good hard ride in a day, but we can make it.

**Mr Gravelle:** I think we're going to hear a lot, obviously, about the amount of the fee, the \$150. It's an important issue to sort out, and I know that the OFSC is really concerned with this as well in terms of getting it right. But my question is, if the fee is too high, and the fact that we have had two winters that haven't been the best for encouraging people, what impact do you think that could have? My concern is that it could have a major impact. If the people perceive that the fee is too high or that they're being forced to pay for something that they shouldn't have to pay for in the first place, it could have a really negative impact. Have you calculated that at all, Jeff or Bob?

**Mr Dicaire:** Any of the experiences I've had with the tourists coming through, or anyone I've talked to over the telephone who plans on coming and wants to discuss the fee, once they realize how the fee is based, how the system actually works and they realize what the trails are like, the amount of work that the volunteers put into the trails, not too many people have a problem paying that amount.

The problem that you'll find is with the traditional users, the local people who have two or three sleds; they're going to have to make a decision on whether they want to use the trails or not. It's my understanding—and I don't want to speak for the OFSC; they'll speak here later—that they have the same vantage point: they also don't want the traditional users having to pay on trails that they've paid for before. As long as we keep all parties working together to a common goal, I don't see this being a problem. I think we can work this out.

**Mr Gravelle:** I think that is the trick.

**Mr Bisson:** I've got two questions. The first one is in regard to the act. One of the things this act says in short terms, outside of legal terms, is that if somebody takes your snow machine, takes off down the trail and gets caught, it's the snow machine that gets fined. Most of us have a couple of machines at home. If one of your kids or a neighbour's kid, a nephew or somebody, jumps on the machine and goes down the trail, it's the machine that gets the ticket. Do you see that as being fair, or should we amend that section of the legislation to ticket the



person who has been caught, and if that person didn't make sure there was a ticket on, then it's the person who gets charged?

**Mr Krause:** I believe the person should get charged.

**Mr Bisson:** You? It's not a trick question. We get into this every now and then in legislation. I know we've been down this road before, when we were the government, and I was very uncomfortable with it. Now I see that this government has adopted the policy that they were opposed to when we were in government, and I'm a little bit confused because everybody's changed position on this. I really have a problem with that, because the nature of snowmobiling is that often your kids are going to take the machine to go out on the lake for a ride and they cross the trail to get somewhere and, whammo, dad's just got himself a \$100 fine. I know what's going to happen to that kid when he gets back home, but that's another story.

**Mr Dicaire:** That's the whole thing, but I agree as well that it's got to be the person who's travelling. If they're old enough to possess a licence and be travelling on a machine, then they've got to take some responsibility.

**Mr Bisson:** The other part of the legislation under 17.1 deals with the issue of a person who is told to stop by a police officer and doesn't. The fine is a minimum of \$1,000 and up to \$10,000 or six months in jail. Is that excessive? I'm thinking, yes, there are cases where if the person involved is drinking or they've broken the law, I can understand why we'd want to have something as severe as that—it's probably in keeping with the motor vehicle act, I would imagine—but again in the case of the 15-year-old son or daughter who takes the machine and says, "Oops, I'm about to get caught," you're with a \$1,000 fine, maybe \$10,000, depending on how the judge feels, or there's jail time, is that excessive?

**Mr Dicaire:** I don't believe it's excessive at all. I've been on the trails a lot myself and I've seen some of the "animals" who drive snowmobiles. If people are running they seem to ride a little more erratically, and when they come around some of the corners that we have in north-western Ontario and come up some of the blind hills and you meet a family head on, there have been enough deaths in snowmobiling lately that they have to make it so that people take it seriously.

**Mr Bisson:** Here's a question for the parliamentary assistant: I take it that section 17 is in keeping with the motor vehicle act, right? That's where that comes from?

**Mr Spina:** Yes. What we're doing is bridging the infractions, if you will, on the snowmobile much closer to the Highway Traffic Act. Very similar infractions would be bridged to the actual driver's licence so that if there was a suspension with one it would equally apply to the other.

**Mr Bisson:** The last question is about the amount of the trail permit. There are some people who feel that's excessive. Is that your view, or is that a fair assessment, \$150 for the trail permit?

**Mr Krause:** At this time, knowing the amount of work these people have put into it and the terrific cost of doing this, it's not really. As Jeff said before, once you realize what these people have spent to do this work, \$150 is not bad. But you get people who look at \$150 and say, "What am I getting for it?" A lot of times those are the people who don't even know what a snowmobile trail looks like.

**Mr Bisson:** I have another question but I'll wait for the OFSC to show up.

**The Chair:** Thank you very much for making a presentation. Just so you don't think it's only one level of government, I noticed last year that Northumberland county left Cobourg off its tourism map. It only happened to be the biggest city in the county—surely an oversight on all parts.

Thank you very much for coming all this way to make your point. Good to see you again, and best of luck on that interpretive centre. I remember talking about it at AMO last year. Good luck.

I'm told we've had a cancellation at the 2 o'clock spot and two of the members have asked if we could have a brief recess. I'm not going to go the whole 20 minutes but I'll give you a 10-minute recess. Apparently the media have made a request to speak to two of the members. The committee will stand recessed for 10 minutes.

*The committee recessed from 1400 to 1412.*

#### BEDA'S CANADIAN LODGE

**The Chair:** I call the meeting back to order. Thank you all for your indulgence. Our next presentation will be from Beda's Canadian Lodge. Good afternoon. Welcome to the committee. I take it you're Mr Beda?

**Mr Pat Beda:** First, I just want to say thanks for having me as a speaker and I do kind of feel like a fish out of water here because my two concerns on Bill 101 are, basically, how it's going to affect me as a sportsman and how it's going to affect me as a tourist outfitter. I've got a couple of pages put together here and I have a couple of questions and I'd be more than happy to answer any.

Section 49 of the Public Lands Act states, "any person has a right of passage on a road other than a private ... road." Approximately 90% of the trails in northwest Ontario are on existing public forest roads. Many of these public forest roads were built over existing trails that trappers, hunters, fishermen and prospectors used for years. Bill 101, as it is written, gives the OFSC land tenure and prohibits those of us who have used these old trails for years from accessing traditional hunting and fishing spots. Many of these roads were paid for by the public and are supposed to be open to the public under section 49 of the Public Lands Act. Why should the OFSC have exclusive use of the public forest roads where, in the past, there has been multiple use? If I'd like to ride the trails, I'll gladly buy a permit. My paying tourists, if they want to ride the trails, will buy a permit.



There is other winter tourism than snowmobile riding. I had been successfully marketing my product for years before the snowmobile trail came into existence. I didn't need a groomed trail before it came and I don't need it now. Organized snowmobiling was funded by the government to promote tourism, yet the Ontario federation has held the government ransom by threatening a \$300 fee on non-residents unless they get their way with the government. And now you want a piece of my action from my clientele. I don't feel that's right. I've got 21 clientele this winter lined up for ice fishing—strictly ice fishing. If they have to buy a permit to go ice fishing for the short, approximately three quarters of a mile of groomed trail that they use, they're not coming. Although the business has been in the family since 1939, my wife and I just purchased it a year ago. If I lose that clientele, that's four months' mortgage for me; it's detrimental.

Nothing in Bill 101 addresses traditional users or tourist outfitters. Basically, that's all I have to say. I do feel that I could take questions and give you good answers because I've worked the industry both sides of the border. I did belong to Adventure Trails for three years. It didn't work for me for recreational riders because we don't have the same products at Shebandowan that they have in the immediate Thunder Bay area.

**The Chair:** That does leave us lots of time for questions. I'm sure there will be many. This time the rotation will start with the Liberals.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** You're at Shebandowan. You're not getting a lot of tourism value directly from snowmobiling itself.

**Mr Beda:** Initially, when the trail was pushed out there and I got on with the club, it was a run for the money; it was a new place to go. It sounds trivial to some of you guys from the south but a good weekend was 60 sleds and four or five during the week. For me it wasn't feasible; I did not get a return on my money. After three years, I dropped out of trail riding and resumed with ice-fishing clientele.

**Mrs McLeod:** Can you explain why the necessity of the permit would directly affect your ice-fishing clientele?

**Mr Beda:** The bill, as it is written, does not address any traditional users. It's plain and simple that anybody who uses any section of that trail will have to have a permit. These groomed trails were not constructed by the snowmobile clubs. They ran a groomer down a road that our tax dollars had already paid for and were abandoned by the logging companies. When they came and groomed those trails, we didn't have a problem with them because we could coexist. And now the general public who ice-fishes and hunts and traps and prospects, we're feeling like we're being pushed out by squatters. We didn't complain when they came.

**Mrs McLeod:** But your clientele would use portions of a trail in order to access the particular spots—

**Mr Beda:** I'm sorry?

**Mrs McLeod:** Your particular clientele, the ice-fishing clientele, in the wintertime would use portions of

the snowmobile trails in order to access the sports where they're fishing?

**Mr Beda:** Yes. I would rather say that the portion of the trail that they've been using is now groomed by the snowmobile club.

**Mrs McLeod:** I think those are all the questions I have.

**Mr Beda:** I would like to add, if the snowmobile federation had a good product, they wouldn't have to force it on people. And furthermore, if you've got something you think is good, you should give away some free samples. If you go to Minnesota—if you're licensed here, you're good to go. I've had positive comments from Americans on our trail system and I've had some negative comments, from, "Can't find our way on the trail because it hasn't been groomed in weeks," to lack of signage, to the cost. I think if you had a good product, you'd get more of the general people of Ontario on board for what you're trying to do.

**Mrs McLeod:** Maybe I'll actually ask one small question if there's still a moment. Has there been any direct conflict—I don't mean interpersonal conflict—between the snowmobile users and the ice fishing clientele who would be using a portion of the trail? Has it caused any problems?

**Mr Beda:** No, there's been a very pleasant co-existence until now. I'm afraid that because of the lack of publicity over the past summer about what's trying to go down here, things could explode this winter. I expected the seats to be full today, but according to the OFSC Web site, they wanted this kept pretty much under wraps until it was all tight and done. I've got that copied off the Internet. I think the public should have been more informed, to get more people fully aware and get more people on your side.

**Mr Bisson:** I hear part of what you're saying. I don't agree with the way you're trying to position the OFSC. There are a lot of good volunteers who are working to promote tourism in our area and I have a bit of a problem with the approach, but I understand and respect that you have your view.

My question is on the issue of those who traditionally use those old roads to access lakes. How would you make that work? If the law says you have to have a trail permit to ride on the trail, and somebody who's going to your establishment, going out ice fishing, uses four or five miles of the trail to get there, how are you able to police who is going fishing and who is not? Do you have any suggestion how that could be done?

**Mr Beda:** Yes, I do.

**Mr Bisson:** I have some sympathy for what you're saying, but it would be fairly difficult to do.

1420

**Mr Beda:** I'm in contact with some of the conservation offices in the area. It's pretty evident when somebody's going ice fishing, they're travelling with a certain amount of gear. If they're not travelling with any gear, they're snowing you. I don't know how you would



put how much gear into a law, but the people in charge of enforcing it would know if you're snowing them or not.

**Mr Bisson:** You're asking us to see if there is an amendment that can be made for anybody who's utilizing the trail for strictly those purposes. They're not out trailing, they're trying to get to their trap line, they're trying to get to a lake to do some fishing within reason; not like I'm going down 80 miles to get to my lake. I think that would be a different situation. You're looking for some sort of amendment to cover that off, right?

**Mr Beda:** Absolutely. There's a fair number of local residents who fish the same lakes that I send my tourists to.

**Mr Bisson:** I guess I raised part of the problem in my own thinking out loud about this, because what do you do with a person like me who goes fishing? That's one of the things I do when I snowmobile, but I'm going like 80 miles back on a trail somewhere. Is that considered sledging or is that considered fishing?

**Mr Beda:** If you've got gear with you, you're obviously going fishing. I don't know of many recreational riders who—

**Mr Bisson:** All right, let's bring that one step forward. Not that I want to defend the government—God knows I don't want to do that—but if all I've got to do not to get a trail permit is put some fishing gear behind my sled, I'm trying to figure out legally how you can deal with the issue. I agree with you; those people who are not primarily using the trails for trailing, but rather they're trying to carry out another activity, if there's a way of drafting an amendment that covers that, I'd be prepared to support it. But I have a problem doing something blanket because I know what people will do. All my friends back home would say, "Oh, Jeez, I've got five fishing rods. I'll keep them in the back of the sled and have a great time." I'm trying to figure out how you get past that.

**Mr Beda:** It's kind of like a couple of vehicles down the road. If there's a private vehicle with people in it, they might be on a trip, but if there's a truck, they're obviously working or hauling something; a similar situation.

**Mr Bisson:** Then one of the things I'd ask research is if we can look at seeing if there's some way of drafting an amendment that would deal with the concern he has but doesn't make it so that people can use it as a loophole to get out of paying their trail permits. Most of the members of the committee would, I hope, agree to look into that. I see a nod from the parliamentary assistant. I take that as a yes.

One other question before you go, if I have time, Chair?

**The Chair:** Very briefly.

**Mr Bisson:** Then I may not have time.

**The Chair:** No, go ahead.

**Mr Bisson:** OK. Under section 7 of the act, it basically says that at all times you must carry a trail permit or your driver's licence when on a trail or on public land. That touches back to the issue you talk

about, which is that a person who goes out fishing or a trapper who goes out trapping has to have their driver's licence, and/or if they don't have a driver's licence, a snowmobile permit to drive off the trail, or the conservation officer can charge you. Should that be amended?

**Mr Beda:** I'm not sure I fully understand your question. Can you repeat it?

**Mr Bisson:** I'm not sure I understand it myself.

**Mr Beda:** There you go.

**Mr Spina:** Time's up.

**Mr Bisson:** Time's up. I think I'll have to come back to it, Chair, or do you want me to try to explain it?

**The Chair:** If what you're asking is, should you have to have a driver's permit with you—

**Mr Bisson:** Off the trail.

**The Chair:** —off the trail, on otherwise public land, as a reference point for a police officer or a warden, I think Mr Beda probably might have—

**Mr Beda:** I definitely think you should have to have some sort of identification. I'm not sure if I'm fully in favour of the licensing. I have grandchildren who are two and three now and when they've five, six and seven, I expect to have them down on the lake in front of our establishment maybe doing 100-yard loops with a snowmobile and, the way that law is written, they aren't going to be able to do that. That's kind of a tradition for anybody who's been into snowmobiling. So yes, there need to be some amendments there too.

Actually, I would like to know who is representing the Ministry of Tourism here. Would that be you, Mr Spina?

**Mr Bisson:** You're just about to hear from him.

**Mr Beda:** May I ask a question of you?

**Mr Spina:** Yes.

**Mr Beda:** The question I have is pretty simple. It may seem provocative, but it's not. I don't understand how you can give away exclusively by land tenure something the government has already sold to me, which is my tourism licence. It states that I am a resource-based tourism outfitter who uses a significant amount of crown lands and/or natural resources. It doesn't exclude the snowmobile trails.

**Mr Spina:** Sorry—it doesn't exclude the snowmobile trails?

**Mr Beda:** My tourist licence does not exclude snowmobile trails. It's resource-based, so you're giving away free to the OFSC something that you've sold to me already, something that I consider mine; I paid for it.

**Mr Spina:** Technically, just to answer the question, you're paying a fee to use the system, and in effect, people who use the sanctioned OFSC trail system are also paying a fee. The difference is you're paying it to the government and they're paying it to their snowmobile clubs and their federations. It's under a land use permit system. It's not the same, but it's parallel. That's the answer to that issue.

I wanted to talk about the "right to crown land" issue that you addressed earlier in your comments. I'm happy to talk about that, because under the policy of access to crown land in the province of Ontario, the MNR has been



involved in all of the meetings on the drafting of this bill. In fact, we've had 10 different ministries involved in the internal discussions on this bill. If we are going to proceed with mandatory trail permits—and I say “if” because the bill is only in first reading at this point; that's why we're here having public hearings, to hear the issues coming back to us—the MNR wants to make sure that whatever we come out with, it fits within their policy of access to crown land.

The snowmobile federation gets access to crown land under land use permits, so they get issued LUPs for sections of the trail, which permit them to build the trail for their use. Under that right, if you will, they get the right to charge the users of that trail system a fee. The difference is that you get a tourism permit to operate your camp; you pay a fee to the province for use of that crown land. So there is a parallel there.

To tie the two together, which addresses your issue, if I've got three quarters of a mile of trail that was a traditional use and I've got people who are going to be accessing it and you've got people who are going to be accessing your ice fishing camps in the winter or whatever, why should they have to pay the full fee? No argument. Right now the federation, under its own autonomous infrastructure, has exemptions for some traditional users—trappers, loggers, bait fishermen and some of the operators.

What may be tacit permission, in other words a co-operative verbal agreement with your local snowmobile club, really is endorsed by the federation itself. In passing, if we get to the stage where we introduce the mandatory trail permit system, what we want to ensure is that those rights are still and continue to be protected, except you'll be even more protected because now it would not only be set in law, but would be set in regulation.

Did you read the act?

**Mr Beda:** Yes, I did, and actually I didn't see “traditional user” anywhere in the act. That's why I'm here today.

**Mr Spina:** Let me refer you to section 9 of the bill. It amends section 26 of the Motorized Snow Vehicles Act. I'm going to paraphrase this, but you'll see it in three different paragraphs in section 9: regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or its regulations; regulations may also be made general or particular and different classes of persons may be identified for exemptions from the act or regulations.

This clause in the bill permits classes of permits to be issued. The one difference that could happen under this system is this: instead of just riding the system, you may have to go and get a sticker for the sled, but you wouldn't be paying a fee for it because it would be an exemption sticker for that limited territory in which you would be using it.

The question I would have is, if your sleds were exempted in the area where you use them for your

business, do you think it's fair that if you were beyond that regulated area where you had the exemption, the user would pay the trail fee, normally?

1430

**Mr Beda:** Not if they're going ice fishing, because technically some of my guests go as far as about 72 kilometres to reach some of these lakes and they could be riding 40 kilometres of trail. The concern I have is, where you said “different classes of trail”—I would hope that before this becomes law—

**Mr Spina:** Not different classes of trail; different classes of snow vehicles and different classes of individuals would be identified in regulations.

**Mr Beda:** That would be fine. However, I would hope that before the bill passes those are defined in the bill, because being a businessman I don't like, “I'll pay you next year,” or next whatever. Do you understand what I'm saying?

**Mr Spina:** Yes, because one of the things we are struggling with here is this: how definite do we become in the bill itself in terms of defining specific users, or can we work with the description in the bill of classes of vehicles versus classes of individuals, and then defining those vehicles and those individuals in the regulatory structure that follows the bill?

Right now, for example, the trail groomers are lumped together with the sleds. Under the current 1972 Motorized Snow Vehicle Act, that means if you drive a motorized snow vehicle, you've got to wear a helmet. Tell me the last time you saw a trail groomer wearing a helmet. Technically, that person driving the tractor is breaking the law because 99.9% of the time—in fact always—they'll be wearing nothing but a baseball cap or maybe a toque. In other words, they're breaking the law under the old act. That's why we're trying to expand it to define classes of vehicles.

We're also looking for your more commercial users: hydro guys in the corridor who are maintaining the lines, there may be municipal employees, TransCanada Pipelines, that kind of stuff. We put loggers and some of the traditional trail users in there. Where we need help from you is how you would recommend—and I don't expect you to answer it now, but if you can put some thoughts together with some of the others; I know the Ontario Federation of Anglers and Hunters is also very keen on this issue. We would be interested in hearing from you how you define an area or an individual so that we can describe that in either the bill or the regulations. That's what we would appreciate your input on.

**Mr Beda:** Let me say this from a personal standpoint, just as this gentleman over here asked me, “Do you think people would try to snow you by saying they're going ice fishing?” If I were to go trail riding with a group of people, I don't think I would bother or want to be one of the guys flipping the coin to see who's going to pull this trailer to make it look like we're going ice fishing. If I'm going riding, I'm going riding. If there are people who are cheating the system, they will eventually get caught.



Certainly the OFSC will get more revenue out of it, but at the same time provide for these traditional users.

I don't think classes of vehicle would work for my operation. I don't rent snowmobiles; I rent cottages. The clientele bring their own snowmobiles. They've got a fishing licence they're carrying with them; they've got a fair amount of gear they're carrying with them. Shebandowan isn't the kind of place where you just drive up with your minnow bucket and your hand auger and your jig pole and walk in; you're taking enough gear to sustain yourself for the day and maybe overnight, should you break down. So it's fairly easy to identify who's actually ice fishing and who's not; who's trapping and who's not; who's prospecting and who's not.

I would hope that, before this bill goes through, there will be some provisions for traditional users, because the public's been kept very much in the dark about this. I got a thank-you letter from you here in April for my comments, and not a single person I talked to this summer who's an outdoorsman was even aware of this stuff going down.

**Mr Spina:** This thing has been out in the field for six months. The discussion paper was sent out back in January to 150 people. The 150 are people who sit on many boards of various large organizations, whether it's the parks board, cottage associations, whatever, as well as snowmobile organizations. It wasn't a secret document. They had full right to distribute this discussion paper for feedback before we could even begin to consider whether or not the government was going to move forward in this issue at all.

The feedback we got was enough information to motivate us to move forward. That didn't resolve the issues, but once we did begin to move forward, the proposed bill was publicized. I don't know what else we could have done other than put full-page ads in every newspaper in the province. It's the normal way that bills are publicized. It's been on Web sites. That's why we're having the public hearings, Pat.

**Mr Beda:** I understand. One of the things you could have done is—the government knows where to find us when they send out our snowmobile registration renewals, so they certainly could have found us to send out these proposed changes.

**Mr Spina:** You want to know the irony of that, Pat? MTO won't release that list. I can tell you that for a fact. They deem that confidential information. But that's a good point; thank you.

**Mr Beda:** In closing, and it's my own personal view, and I could get into why I feel this way, and I worry that others in the public would feel the same way I do, but I do feel that organized snowmobiling—I won't say the OFSC or Thunder Bay Adventure Trails—do have some public relations things to overcome. There is some negative feedback coming, and there is some stuff on paper that shows why people feel the way they do.

**The Chair:** Thank you, Mr Beda. You made one comment that I would like to reflect on very briefly, about this winter having problems. I'm not going to

suggest, as committee Chair, that around here we have the power to necessarily stop anything or make guarantees, but I'll tell you that, based on past practices, it would be extraordinarily unlikely that anything we do here would be reflected in law in time for this season.

One other thing that I didn't mention at the outset today, just to draw it to people's attention, is that this is only about the fourth or fifth time that we have ever held hearings after first reading of a bill. First reading is really—you just read the title of the act and you table the bill. Traditionally, hearings take place after second reading, and by that point all three parties have basically hardened their positions. One side's right, the other side's wrong, and it's very tough to get the kind of compromises and to genuinely seek input with an open mind.

We have found so far, in the four other bills that have gone through, an extraordinarily different scenario. I mentioned yesterday that Mrs Bountrogianni, who was one of the Liberal members on the Mental Health Act that went through, saw first hand that if we have these sorts of hearings earlier in the process, we can go back and reflect not just once, but twice, on what we've heard. It really does give us an extra kick at the cat.

I've been very encouraged by what we've seen in the first reading process so far. I wouldn't want you to despair that a lack of feedback so far necessarily means one thing or another. We genuinely look forward to hearing suggestions as specific as we can get from people in the course of these hearings. Then we have the time to go back, all of us, and reflect on that and the suggestions we make for amendments before the bill even goes back for second reading debate.

I want you to have perhaps a slightly higher comfort level than you might have had with past government—and not just our government—any government initiatives.

**Mr Beda:** One of the main reasons I was concerned about what could transpire this winter is because of the number of people in recent months that I've talked to that are unaware, who would be going out there ice fishing this winter and all of a sudden getting a ticket and a confrontation, mainly due to the fact of fishing regulation changes of a year and a half ago. It pitted outfitters in my area against western region outfitters who didn't have to clean their fish holes. I wrote a letter to the government saying, "I hate those guys and I don't even know them." That wasn't right. Within a matter of weeks, from all the complaints they got, they said, "We can't have this in-provincial citizens' fighting," and they made changes. I don't know if you guys have looked at the long-term effects here of what "traditional use" means to us northerners as opposed to down south.

**The Chair:** I think we're hearing the message loud and clear. I want you to be encouraged by that.

Thank you very much, sincerely, for taking the time to come and share your thoughts with us here.

**Mr Beda:** Thank you for having me.



ONTARIO FEDERATION OF ANGLERS  
AND HUNTERS, ZONE B

**The Chair:** That takes us to our next presentation, the Ontario Federation of Anglers and Hunters, Zone B.

Good afternoon, and welcome to the committee. We have 20 minutes for your presentation.

**Mr Neil Wiens:** Good afternoon.

I'd like to thank you for giving me the opportunity to be here in front of you today. This round of public consultation is long overdue concerning these recommended changes to the Motorized Snow Vehicle Act.

Many of the concerns that I will express on behalf of myself and the Ontario Federation of Anglers and Hunters have been echoed by the previous speaker, and I'm sure you will hear it from them in writing. They echo some of the same anxieties that are or will be put forth to you by individuals or organizations representing trappers, prospectors, cottage owners and hunt camp owners. These groups of snowmobile riders have been accessing much of northwestern Ontario—in fact, most of Ontario—for many more years than the Ontario Federation of Snowmobile Clubs has been in existence. Since the inception of the groomed trail program, there have been conflicts between the snowmobile users that cross our frozen crown land in pursuit of the pleasures of trail riding versus recreation and employment.

There are clearly two different classes of users. The group that I represent has been around since the snow machine was offered for sale to the general public. We are the traditional users of the vast network of roads and trails that cover crown land throughout the province. Our snow machine is a tool. We use it to enhance or simplify our access to hunting and fishing areas. We use these machines to access trapping areas, for prospecting and to reach our cottage or camp. The snowmobile is a means to an end. For recreational riders, the snow machine is the end. The pursuit of their enjoyment starts and stops with this motorized transport vehicle. They're different purposes altogether.

When the trail network was initiated, many of the routes chosen for improvements were trails or road networks that had been available to traditional users for years. In fact, many of the traditional users regularly maintained those sections of roads and trails over which they travelled—certainly not to the extent of the Ontario snowmobile clubs, but maintenance just the same. There was no consultation when these traditional trails were taken over for part of the routes that are now managed and groomed by the snowmobile federation clubs. Now these same traditional users are being asked to subsidize a program for which they have no direct need and which is attempting to infringe on the pursuit of the enjoyment of our pastime or livelihood. This was wrong before these proposed changes and it is no less wrong now. You must find a way to continue the currently allowed

exemption from the permit system that is in place for traditional users.

I don't currently own a sled. My son has a late-model machine and has owned snow machines for many years. He has indicated to me that to force this extra cost on him will be enough to move him away from snowmobiling. This is a sentiment that I have heard from other anglers and hunters.

At a time when the Ministry of Natural Resources and groups like OFAH are trying to encourage people to take up hunting and fishing, this bill will add to the difficulties we are facing with recruitment drives. Ice fishing and winter hunting are wonderful activities, but the pocket-books are only so deep and it seems that there is a never-ending flood of regulations that would inhibit the pursuit of these pastimes by making them ever more costly to enjoy. The expense of a trail permit to traverse areas that have always been, in the past, open to our crossing for a purpose other than simply riding the trails is as unwarranted as the need for groomed trails to fulfill the reason we are on the snow in the first place. The very title of the act is a bit of an enigma to me: "to promote snowmobile trail sustainability and enhance safety."

I mentioned earlier that there has been an allowance in place for an exemption from the permit requirement for traditional users who must use part of the Ontario Federation of Snowmobile Clubs trail system in order to reach their destination. I mentioned some conflicts. Over-zealous trail wardens can have a detrimental effect on safety. Anglers and hunters are sometimes going to their cottages and they're made to feel like lawbreakers if they're stopped on the trail. This has the potential to make someone push the limits of speed in an effort to cover that part of the trail they must use in the hope that they'll get off the groomed trail before anybody finds them on it.

Parts of many of these trails here in northwestern Ontario were kept open by users who passed through in all seasons: anglers and hunters in the winter on snow machines, and in the summer, on all-terrain vehicles or in conventional trucks and four-wheel drives. They worked at keeping access routes clear of fallen trees and encroaching brush.

As an angler and hunter, I also have a concern about how this act and supporting regulations will be used as a precedent when another special interest group or perhaps even the Ontario Federation of Snowmobile Clubs itself proceeds to declare or obtain ownership of a network of trails and roads across the province through the land use permit process. Will there be the potential of further infringing on traditional crown land use by anglers and hunters and others who access parts of this province on trails and old road networks by way of an all-terrain vehicle during the snowless parts of the year?

As I said before, it's clear we have two entirely different groups who would use the vast network of trails and roads across crown land. They should be treated differently in the regulations pertaining to who should be assessed a fee. Anglers and hunters are not looking to the



Ontario Federation of Snowmobile Clubs to subsidize the special purpose account that is used to manage our fish and wildlife. Do not penalize us for wanting to continue to enjoy our favourite pastimes.

**The Chair:** That leaves us plenty of time for questions. This time the rotation will start with Mr Bisson.

**Mr Bisson:** Thank you for your presentation. I think you echo what a lot of us in northern Ontario were feeling over the last number of years, that the traditional use we've had for the outdoors, everything from hunting to camping to fishing or whatever activities we have utilizing the outdoors, seems to be falling more and more under some sort of regulatory system. The latest attack now is 21-day camping. God knows you can't go camping in northern Ontario with your camper for more than 21 days without being ticketed. The spring bear hunt has been banned etc. I hear what you're saying, and coming from northeastern Ontario, I tell you, that's the message we're hearing loud and clear over there.

I want to come back to the comment you made, and you echoed the comments of the previous presenter. Do you have any suggestions—not word-wise—to guide this committee about amendments we could make to the act so that it doesn't capture those people who traditionally use the outdoors for those other activities, who are not sledding? Do you have any suggestions? Have you given it any thought? I think there is some support here.

**Mr Wiens:** Anybody who is using it for a purpose other than sledding is going to have a machineful of equipment that is certainly going to be easily identifiable for purposes other than just joyriding on the trails. You're not going ice fishing without an ice auger in the northwest, because the lakes aren't open; you're not going hunting without a rifle; you're not trapping without some gear with you; you're not prospecting without some gear with you. It doesn't take a rocket scientist to look at what's on the sled and say, "Yes, I know where this person's going."

**Mr Bisson:** But how do you prevent the situation happening if somebody—I've got a carrier in the back of one of my machines. I throw a knapsack in there with all the paraphernalia to go ice fishing.

**Mr Wiens:** Are you going to carry a five-foot ice auger in the back of your machine? You're not going to enjoy yourself much. You're going to find that you're not going to use the trail for joyriding if that's what you're going to be carrying.

**Mr Bisson:** I might use an axe or I'm going to uncover an existing hole or whatever. I'm just trying to figure if there's any thought. I've asked the committee research people to see if they can come up with some language in legal terms, and I'm just hoping somebody has some ideas or suggestions as to how we can get at this issue. From what I'm hearing here from all members of the committee—I can't speak for the government, but certainly we on the opposition side—I don't think we want to see that captured under the act. We have the same concerns as you have.

**Mr Wiens:** There is an exemption that's provided for those traditional users right now, and it may well have to be expounded on a little bit more. Mr Spina mentioned that there was the potential of issuing permits to people who are using them for reasons other than simply trail riding. I'm not sure whether that is the issue. It's something that groups like the Ontario Federation of Anglers and Hunters, and trappers' and prospectors' associations, may well have to give some thought to and provide some more information to you.

As I say, up here in the north, it's cold enough in the wintertime that chances are you're not going to open a hole with an axe unless you've got an axe with a long handle on it. Most people who are trail riding don't want to be burdened with unnecessary equipment behind them. They are out there to enjoy themselves. They're not going there for another reason.

**Mr Bisson:** To the Chair of the committee: do we have to put that in the form of a motion?

**The Chair:** No.

**Mr Bisson:** It's sufficient, and we'll get the work done. OK.

**The Chair:** I don't know whether research is particularly the vehicle you want to go through. I think you'll find that yesterday the parliamentary assistant had already made a commitment to ask the ministry to come back with something.

**Mr Bisson:** I just want to make sure we look at that issue.

The other one is the same question again, and that is, should people have to have a driver's licence or a snowmobile licence to be driving a machine off the trail system?

**Mr Wiens:** I think that would be a good idea. Snowmobile permits for children who are less than 16 years old and things like that, with snowmobile courses for the safety aspect, are certainly a good idea. I happen to disagree with the portion of the act that says a liquor infraction on a snow machine is going to lead to your driver's licence being restricted, but that's a personal issue.

**Mr Bisson:** OK, that's it for me. Thank you.

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**Mr Spina:** There are a couple of things that I wanted to respond to. I reiterate what Gilles was saying and what I said earlier to Pat Bédard. You made a bit of a comment in your response to Gilles about how the definition of an exemption or an exempted person should be. Right now, as you know, there are some exemptions and there are some definitions. One of the reasons this section 9 that you heard me read out earlier was actually put into the bill was in response to Rick Morgan's input as a part of our original consultation process.

**Mr Wiens:** I think it has to be in the bill itself right from the outset, not a regulation that can be changed at some later date.

**Mr Spina:** OK, that's a fair comment, thank you, but never at any point were we asking that the anglers and hunters be subsidizing the trail system.



**Mr Wiens:** That's exactly what they would be doing, Mr Spina, if they're forced to pay for a trail permit to use a portion of a trail to access areas where they want to hunt and fish; to use a groomed trail over which they had travelled for many years prior to the network of trails that is being managed by the snowmobile clubs.

**Mr Spina:** This is where we need your assistance to help us try to define what a traditional user is. Are you suggesting to me—and I'm asking you; I'm not trying to be a smart guy here—that if somebody wants to go fishing, they can get on the trail system and go anywhere in this province and they should have an exemption? Is that what you're suggesting?

**Mr Wiens:** Very few of the trails are going to exactly access the lakes that people want to go fishing in, but you may have to traverse a portion of that trail to reach a lake that's got some fish in it to go fishing. But at some point you're getting off the trail to go fishing. You're only using it to reach a destination, for a purpose other than joyriding.

**Mr Spina:** This is what we are asking the federation and all its members and all its delegations, in all of the places that we are going to be having these public hearings, because it's clearly going to be a repetition, worded differently perhaps by individuals. That's fine. We understand that and we welcome that, but what I'm saying is that if you communicate this back, we're happy to hear your concern. Tell us how we can more accurately describe that, if we proceed with mandatory permits at all.

**Mr Wiens:** What's the time frame that you're looking at?

**Mr Spina:** You've probably got at least three or four weeks.

**Mr Wiens:** Thank you.

**Mr Spina:** I say that because that's likely when we'll get into the discussion of amendments to the bill. That's all I'm saying.

**Mr Wiens:** The point I'm trying to make, Mr Spina, is that I want to make sure it's clear that there is an issue with traditional users and they have to be taken into consideration. I think you've heard that and you've echoed to me that you've heard that.

**Mr Spina:** Oh, yes. Section 9 of the bill was actually created in response to those comments. That's what I wanted to assure you of.

Also, I think the last point you mentioned was the fish and wildlife fee fund.

**Mr Wiens:** The special purpose account.

**Mr Spina:** That's a protected trust. MNR is at the table with any move that we make on this bill. It is their responsibility not only to protect the crown lands in the traditional way they have been mandated to do in terms of public access to the system, but it is also their responsibility to protect the individual categories of users that they license, and that includes all of you, all of them and anyone else who has a licence.

**Mr Wiens:** That's what I was driving at there, and perhaps you missed the point. Currently anglers and

hunters must purchase an Outdoors Card. We're not asking the snowmobile operators to purchase an Outdoors Card to enjoy the great outdoors. The money from the Outdoors Card goes to the SPA, the special purpose account.

**Mr Spina:** No argument. I hold one. Anyway, thank you.

**Mr Gravelle:** Neil, it's good to see you. I think it's important for the committee members to understand that you're representing a large number of people.

**Mr Wiens:** About 82,000 people at last count.

**Mr Gravelle:** Exactly. I think that's important. It is a big issue.

The question I have, which actually isn't much different from Mr Spina's, is to try to find some way of defining who would be exempted from actually having to buy a permit if mandatory trail permits go through. What the committee is learning is that the whole issue of the traditional user is extremely important. It's one I've spoken about a great deal in the Legislature over the last six months as well, let alone the fact that I think the cost of the permit may be too high in some areas.

**Mr Wiens:** I think, Mike, rather than a definition of the traditional user, it's a definition as to what use the snow machine is being put.

**Mr Gravelle:** How would you define that, then?

**Mr Wiens:** How do I put it? It's a means to an end rather than an end in itself.

**Mr Gravelle:** Again, we need to find some way to make this work.

I guess my question ultimately ends up being that there are some who are simply opposed to this legislation. They feel it basically just shouldn't be going forward at all because of what it actually is required to do. And there are some of us who would argue that the government should be providing just straight funding to the snowmobile clubs in terms of the economic return they have, and they shouldn't be expected to get their support through trail permits. I'm sure the government has heard that as well, that there needs to still be pure government support for that.

Could you find a way to define the traditional users of snowmobiles in a manner where you would be prepared to say you could support the goals of the legislation, which are obviously to provide sustainability for the snowmobile federation? It's a funny question.

**Mr Wiens:** I think there are an awful lot of good things in the bill, don't get me wrong, and I think it's a good idea to promote exactly what it is you're trying to promote, but not at the expense of the traditional users, as I've argued. Yes, I think the support is there, but the exemption has to be clearly in there for the traditional users.

**Mr Gravelle:** I'll be honest: it's been a very tricky issue for myself as a northern member as well. Certainly I'm sensitive to the needs of the snowmobile federation and have spoken to them, but obviously I've also had contact with a great number of traditional users who are concerned that they're going to be hit when they



shouldn't be, and justifiably so. I think the key to this happening is finding that balance and compromise, and it needs to be pretty clear. Finding that clarity is the trick right now.

**Mr Wiens:** One of the scariest things, when I talk to some of the anglers and hunters who use snow machines to access areas up here, is the promotional material that the clubs have used. I can't speak for how their ads ran down in eastern Ontario or things like that, but last winter when they were trying to promote the snowmobile trails up here, it seemed that it was more by intimidation than anything else. The message is, "Don't get caught on our trails, because we've got 2,500 wardens out there who are going to catch you." That was the message: "Buy a trail permit. If you're on the trail without one, you're dead meat." That's the wrong message. That's poor marketing. As far as I'm concerned, that's not marketing correctly. But again, that's an issue they're going to have to deal with.

**Mr Gravelle:** That's a very good point, Neil.

**Mr Wiens:** But what's happened is that it's gotten the anglers and hunters saying, "I don't want to use that trail if I don't have to," and yet they've come and usurped the trail that we built in the first place, because it's going over the best piece of crown land to get from point A to point B. That's where some conflicts come.

**Mr Gravelle:** Absolutely. The point you made earlier about the negative aspect of the campaign, saying, "We're going to get you"—Mayor Rutherford of Beardmore made that point earlier as well—"You try this out, we'll catch you," was perhaps not the approach to take.

Obviously the fact is that you represent a great number of hunters and fishermen in the province and your point of view has got to be listened to very strongly and we've got to find that way of framing it. As it's been said often here, we are at a very early stage. The Chair made a reference to that. There's an opportunity to make some changes and I hope we are able to do that so that it will satisfy everyone. It will be tough.

**The Chair:** Thank you, Mr Wiens.

**Mr Wiens:** I'll leave a copy of this with you, if you care.

**The Chair:** I would. Thank you very much.

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#### NORTHWESTERN ONTARIO SPORTSMEN'S ALLIANCE

**The Chair:** Our next presentation will be from the Northwestern Ontario Sportsmen's Alliance. Good afternoon and welcome to the committee, Mr Hay.

**Mr John Hay:** Probably some of what you're going to hear from me has been said already by the last two presenters, but that's too bad; you'll have to hear it again I guess.

By way of introduction, my name is John Hay and I'm the public relations director for the Northwestern Ontario

Sportsmen's Alliance. One of my jobs is to make presentations to committees like this.

On behalf of the alliance and its members, unfortunately I will be speaking against Bill 101. Our arguments will illustrate that Bill 101 in its present form is discriminatory, exclusionary, morally wrong and actually unprecedented. An arbitrary land claim such as this is probably not legally supportable and possibly an infringement on rights and privileges we already enjoy.

We should be cognizant that this is a land claim by the trail proponents for exclusive rights to certain amounts of crown land. This claim is presently being facilitated by the provincial government. I have some philosophical problems with that; right now I'm not going to get into those. A successful claim on these public lands will empower a private special interest recreation group to charge fees on public land and enable them to levy fines for trespassing on public land. I have a problem with the phrase "trespassing on public land." It seems to be a little bit of an oxymoron to me.

My personal and professional history includes being active in the labour movement. One of the many valuable lessons I learned came from a man called Dr Eric G. Taylor. He's a very astute and well-respected man in labour issues on both sides of the bargaining table. Doc Taylor had some interesting ways of dealing with proposals and whether you should bring something forward. He had three tests for them: is it reasonably practicable, is it morally sound and, finally, is it legally defensible? I am at a loss to see where Bill 101 could pass all three of these tests, if any.

Is it reasonable to allow one segment of the public exclusive rights to use certain crown lands from one end of the province to the other? There is not a lumber or timber company that has the clout to even dare to apply for a land use permit of this magnitude. It's only nine metres wide but it encompasses the whole province and would continue to grow with the expansion of the trails. I believe the unprecedented claim to crown land will be the thin edge of the wedge and we would end up with tollgates to fishing lakes and hunting areas by other groups that would make such claims.

I want to bring to your attention a recent advertisement in yesterday's paper that boasts 24,000 miles of sled trails. A related article in the same publication deals with our local snowmobile club and its contributions and trail maintenance program as a pitch for tourists to use the trails. A selling point is the cost for a non-resident trail permit. If there is something wrong with the newspaper article I took this from, possibly someone could correct me on it, but I'll take the quote out of the paper, "The fee for a permit is \$30 but that covers a whole family for a year" to use the snowmobile trails. A family of two riders with two machines would have to pay \$300, and the way the legislation is worded now, they would have to pay that \$300 to cross the trail once to go fishing, and it may have been on land that they originally cleared or that has been traditionally used. I would challenge any



of these committee members to defend that as being reasonable.

Is it reasonable to effectively fence off large tracts of land that cannot be crossed? The trail system is a network now and it effectively fences off crown land that, unless you buy a permit you cannot even cross the trail to get to. The bigger the trail gets, the more extensive the trail gets, the more extensive that exclusion becomes.

As an example, would it be reasonable for a yacht club to claim a body of water exclusively for its members' sole use? Do you consider it reasonable that the yacht club be empowered to fine individuals who previously enjoyed the body of water for swimming or canoeing because they did not belong to the yacht club? Consider a boating club wanting to claim Ontario waters for members only. This is exactly what the bill will do. It will prevent rightful and lawful use of crown land unless you belong to the right club.

I believe the government has erred seriously in bringing forward this piece of legislation as it stands. It is contradictory to some of the principles in this government's Lands for Life process—and I was fortunate enough to sit on one of the round tables—which made it clear that lands would be available to all users. During some of these deliberations with Lands for Life in the round tables, special interest groups lobbied very hard to get some exclusive privilege or exclusive right to the resources. These proposals were not accepted by the round tables, as borne out in the recommendations to the minister and further evidenced in the ensuing Living Legacy document.

I believe it would be morally corrupt for the government to proceed with this bill. The government made a commitment to all the citizens and they must live up the spirit and the letter of that commitment. I hope it's not the same type of commitment that we received from the Ministry of Natural Resources. I had a letter from Mr Snobelen dated 30 days before the end of the spring bear hunt that the bear hunt was going to be there for good.

The mandatory trail permit is a money grab. I won't mince words on that. They do need the money. There are reasons and there are costs involved, and I appreciate those. But more than once the provincial government has bemoaned the federal government's gun legislation as a cash cow. The only subtle difference is that instead of the funds going directly to the government, they will subsidize an exclusive small segment of the population.

Is it morally correct to allow one group of recreational users exclusive domain over portions of crown land? Is it morally correct to force individuals to purchase trail permits in case their outdoor activity may cause them to cross a club's trail? To the best of my knowledge, these trails use some existing roads that were there for many years at no additional cost to the users. This was before the advent of organized snowmobile clubs. I believe snowmobilers would be vehemently opposed to the addition of \$150 to each permit to go to the SPA to enhance my hunting and fishing.

Restricting access flies in face of the Living Legacy with its many references to terms like "for all to enjoy." I didn't read any caveats in the Living Legacy that said "if you're affluent enough and belong to the right club."

This is forced association, hence the term "mandatory." We have a Charter of Rights and Freedoms in this country that guarantees certain rights and privileges. All of the learned committee members, who are probably more constitutionally aware than I am, would agree that you should have freedom of association without penalty or loss. Additionally, I say, you should have the freedom not to associate without penalty or loss. Clearly there would be a loss in northwestern Ontario, especially for not belonging to the snowmobile club and paying the fee.

The provincial government routinely challenges the federal government's gun control legislation. I do not see a lot of difference between the two bills. Both have a mandatory component, both are a money grab with no cap, both call for the loss of a previous right and privilege for non-participation or a significant fine, and for all intents and purposes, especially with the questions I've heard, it's practically unenforceable.

I mentioned previously the publications that said there are 24,000 miles of trail between Kenora and Sudbury. I take offence to the radio ads last winter that threatened that 2,500 wardens would get us for being on the trail without a permit. Since most of the trail up here would be public or crown land, and it took 2,500 to patrol the trail as it was, how many more trail wardens would they need to patrol the other 90% of the trails up in this part of the world? Again, unenforceable.

I believe this is a flawed piece of legislation as it stands. The legislation, for lack of a better word—up here we have had some problems with not being represented or consulted—is bankrupt of any true consultation. At this point, because we're here, this is just comment. Consultation should have been before the bill came out. A lot of these problems may have been resolved; a lot of these questions may have been resolved. There were a lot of groups which would have liked to have had a better chance and, yes, a full-page ad might be necessary.

I'll make reference to Doc Taylor again. If he was here, he would say simply, "Don't put the bill forward," as he would any proposal in our labour relations. If it doesn't meet the three tests, we don't put the proposal forward.

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I must ask in the strongest terms that you drop or amend this bill significantly, and do it immediately. The government has a moral obligation from previous commitments on the use of public lands not to go forward.

I offer our organization's participation in any meaningful dialogue and true consultation on this and any issue dealing with the use of our natural resources to solve some of the problems that we've had so far.

I would like to thank you again, Mr Chairman and members of the committee, for allowing myself and my organization to appear. I am quite prepared and willing to



answer any questions or respond to any comments you have.

**The Chair:** Thank you. That gives us about two and a half minutes per caucus for questioning. This time we'll start with the government benches.

**Mrs Julia Munro (York North):** Thank you very much for coming here today to provide us with your ideas. I just wondered if you were here to hear the presenter ahead of you.

**Mr Hay:** I've been here since the beginning.

**Mrs Munro:** What I wanted to ask you was, would you support the definition that he used in identifying traditional users? He talked about the fact that the critical issue in his view in that area of definition was those who use the trails as an end in themselves—that is, recreational—as opposed to those who would use a trail as a means to doing something else. I just wondered if you would agree with that kind of distinction in users.

**Mr Hay:** That question has been asked probably three or four times of different speakers since I've been here. I have a problem in that it seems there is a predetermined end to this bill that, "Yes, we're going to have mandatory trail permits, so how do we define a certain user?" I have a real good suggestion. I think it's an excellent suggestion to solve the problems and solve the identifying of a user and all these things, and it only takes one word: drop the word "mandatory."

**Mrs Munro:** So you're suggesting, then, that you would—

**Mr Hay:** I'm suggesting that we go right to the root of the problem. Instead of trying to paint and name and number, you don't have that problem if it's not mandatory.

**Mrs Munro:** Thank you.

**Mr Gravelle:** John, you're taking a very strong position on this and a very clear one, which is helpful. How strong do you think the support is for the position you're taking? Do you think that if things go forward, for example, and there aren't sufficient amendments, people will actually ignore this legislation? What do you think the possibilities are? One, how much support do you have for what you're saying? How many people are you representing, in a way? Do you think people will ignore it unless there are some very significant amendments?

**Mr Hay:** Our membership in the sportsmen's alliance is over 1,000 and it's all northwestern Ontario members. We poll our members, we talk to our members and we have quite a good dialogue, and all the feedback I've gotten from this is, "This stinks." Whether it would be challenged or someone is going to just up and drive down the trail and hope they get stopped, I don't know. People get their backs up around here when they're pushed into a corner. I wouldn't recommend that anybody do that, but if someone was fined for crossing a trail to go to his trapline or crossing a trail to go to his camp or crossing a trail to go fishing or even marginally using the trail, I think our organization would have to seriously consider supporting this individual legally. If it went through as it

stands now, we would seriously have to consider supporting any court challenge.

**Mr Gravelle:** If I may, one more question, Mr Chair. I presume, like everybody else who's got some concerns about this legislation—and we certainly have heard a fairly consistent theme, although yours may be the strongest today—you're sensitive to the needs of the snowmobile clubs themselves, though, that there's a need for some kind of financing. Is there a solution? Obviously they need some support to continue to do what they're doing. Do you see a solution to that? When you're talking in terms of a court challenge, that's if there aren't significant amendments or if people are put in a position where they're—

**Mr Hay:** Correct. The last thing I think any of the organizations, mine or the federation of snowmobile clubs, has got is any money to go to court. In being sued, the lawyers get all the benefit; there is absolutely no benefit to us. Somebody might win on principle. That would be the only thing.

**Mr Gravelle:** These clubs are in a bind; they need money.

**Mr Hay:** The best solution is to have the government involved. The province itself benefits from the work that these volunteers do and the province benefits from the trails, and the municipalities benefit from the trails. All levels of government and all stakeholders that benefit should be part of this. I think the provincial government should be funding a lot of what the trails people need and find a formula that's fair to the smaller groups, the smaller clubs, so that they can get some funding and get the trails maintained.

**Mr Gravelle:** Yes, that's certainly my feeling as well.

**Mr Bisson:** Actually, you've been quite clear; I have no questions.

**The Chair:** Thank you, Mr Hay. We appreciate your taking the time to come before us here today.

#### NORTH OF SUPERIOR SNOWMOBILE ASSOCIATION

**The Chair:** That takes us to our next presentation, which is North of Superior Snowmobile Association. Good afternoon and welcome to the committee. We have 20 minutes for your presentation.

**Ms Nancy Tulloch:** Thank you very much for having me here today on behalf of the snowmobile association. My name is Nancy Tulloch.

NOSSA, or the North of Superior Snowmobile Association, is a newly formed organization set up by the volunteer snowmobile clubs of district 16. These clubs recognized the need to further develop their relationship with one another and consequently formed the association. The mission statement of NOSSA reads, "NOSSA by its collective resources of leadership, expertise and partnerships is dedicated to market, support and assist the community-based snowmobile clubs in their efforts to attain sustainable, reliable and safe snowmobile trails in a professional manner throughout the Ontario Federation



of Snowmobile Clubs—district 16.” The clubs represented by NOSSA span from Thunder Bay through to White River, including the highways 11 and 17 corridors.

On behalf of NOSSA, I am here to speak in favour of Bill 101, keeping in mind that four main components must be met in order to make mandatory permits successful. These components are: final authority needs to be granted to the OFSC, especially in regard to permit revenue; OFSC mandatory permits must be an absolute and enforceable requirement on all OFSC trails; we recognize the need to provide reasonable accommodation for traditional access on crown land; and OFSC-trained wardens must have the authority under the Motorized Snow Vehicles Act to enforce mandatory permits.

Volunteers are the backbone of this organization that provides higher quality of life for residents in northern Ontario. Volunteers see to all aspects of organized snowmobile development, starting with trails, to ongoing upgrading, administrative roles, groomer operating, maintenance, work permits, land use permits, insurance and so much more.

It is time to reward these hard-working people with a mandatory OFSC permit to show that their hard work hasn't gone unnoticed and to ensure that all riders taking advantage of OFSC groomed trails be required to have an OFSC permit and thus pay their portion to ensure the trails are maintained for local and touring riders.

What is required of volunteers? Long hours that many times go unnoticed or unappreciated. The volunteer club of the Lake Superior Family Snow Goers, based out of the communities of Schreiber and Terrace Bay, recently upgraded a portion of trail to bypass a swamp. The base cost of the project was over \$10,000. The money which came from trail permit sales, local club fundraising and the Northern Ontario Heritage Fund Corp doesn't depict the reality. Volunteer hours were necessary.

A project priority list had to be developed. A project budget had to be designed. A construction company had to be contacted and scheduled. An MNR work permit had to be obtained. A volunteer had to go and flag a new route through the bush. Volunteers had to schedule other volunteers to work shifts in the bush. Volunteers were necessary to oversee the work of the contractors to ensure that the trail was being developed as per the permit and the wishes of the club. A volunteer was required to report in to the owner of the construction company to provide hours of work. A volunteer was required to pay the contractor. If the volunteer hours are broken down to \$20 per hour, the actual project total would be in the neighbourhood of \$16,000, and this is just to reroute one portion of trail. Volunteers were the ones to generate funds to pay the contractor, but that is not enough. It is also necessary to have them volunteer even more time because, in reality, their fundraising efforts and the trail permit sales do not bring in enough money. OFSC mandatory permits are needed.

1520

For years, various governments and agencies have attempted to promote the snowmobile trail system. There

were 96 non-resident full-season, 91 seven-day and 49 one-day permits purchased in this district alone last season. All these permits were sold to residents of the United States, who assumed that the trails in all of Ontario were up to a certain standard. The volunteers are willing to do the trail work, but it is unreasonable for them to fully support the system when it's others who have the most to gain.

A few volunteers may see tourism as increased traffic on already overworked trails, but most volunteers look at snowmobile tourism in a different light. They believe tourism will aid in the support of communities in need and that tourism provides them with the opportunity to showcase the trails they have spent hundreds, if not thousands, of hours dedicated to. In order to have a product that we can be proud to market, OFSC mandatory permits are necessary, if not critical, to organized snowmobiling, especially within the boundaries of northern Ontario.

With OFSC mandatory permits, if 1,000 more permits are purchased by local residents through district 16, the revenue to the local clubs would amount to approximately \$100,000. This money could then be leveraged to provide dollars to see to trail upgrades and development and eventually to fully market the trail system. This marketing could provide us with added permit revenue from the over 700,000 registered machines in the US Midwest. Assuming this is the case and we attract another 1,000 permit sales equaling approximately \$100,000, it would at least provide volunteers with the knowledge that some funds are available to make their product what they really want it to be.

There is a shortfall in the user-pay system. One reason is that at the present time we cannot warden on all OFSC trails, making it nearly impossible to enforce permits. Land use permits are seldom granted for crown land, and you can be assured that the residents of northern communities know where these areas are and are constantly riding there, much to the chagrin of the dedicated and hard-working volunteers. The government itself should want to put a stop to this, as in the past government dollars have been spent on promoting a set of tourism trails that are not fully up to potential, caused in part because residents and non-residents alike have opted not to purchase an OFSC trail permit but have continued to ride on OFSC trails.

Mandatory permits need to remain in the hands of the OFSC, with the participation of the government. Snowmobile clubs are asking for a way to ensure that all snowmobile trail recreational users pay equally for the system.

Volunteers of snowmobile clubs do so for the betterment of their local club and community. If the government insists that mandatory permits be in their hands, volunteers would not retain this sense. How many people do you know of today who volunteer to upgrade highways and maintain government equipment?

Would landowners be as apt to provide land use permits to the government as they are to local snow-



mobile clubs? The threat of expropriation would be a strong one, which is probably unwarranted, but land-owner fears must be addressed. I would imagine this is a can of worms that is better left untouched.

Snowmobile clubs require a new source of funding to continue to operate tourism and recreational trails. One way to do this is by the provincial government fully supporting Bill 101, with the understanding that the legislation must provide the commitment of an OFSC mandatory permit.

We recognize that accommodation must be made for traditional access on crown land, but then the question arises, who and what is a traditional user? Will every member of a community come forward wanting this status? I don't believe so. Many anglers and hunters see the benefit of groomed snowmobile trails to carry out their recreational activity and will buy a permit in support of such. Those who only use the trail network in limited areas and have used this portion of trail for years should be provided that access with a special permit outlining their parameters. This permit would not allow them total access to all the trails in Ontario, but access to the traditional ones they have used and will continue to use.

In another case, cottagers have in the past made their own trails to access camps. These trails in many areas have grown and developed and snowmobile club volunteers are now grooming and maintaining them. Should these cottagers be made to buy a full permit to travel only a portion of groomed trails to their camp? No. Again, they should be provided with a limited travel permit, allowing them to access their camps but not providing them with full access to the entire trail system.

Limited access permits should be determined by the local snowmobile clubs. In many cases in northern Ontario, the club volunteers already know where John Smith's trapline is or where Jane Smith has her camp and how she accesses it. The snowmobile clubs are the most knowledgeable as to where the snowmobile trails actually are in relation to lakes, rivers, camps, cottages and such.

The snowmobile clubs in District 16 believe in the importance of working together with the previously defined traditional users. Many of these are permit-purchasing members of local clubs and hard-working volunteers as well.

The only difference between the system we have in place now and a system with mandatory OFSC permits is the fact that proper enforcement would be made possible. Living in a northern community myself, it would be necessary for the police, STOP officers, conservation officers and OFSC-trained wardens to be able to enforce the proposed legislation.

In the northern districts, police officers do not have the equipment at their disposal to fully enforce the trail system. We provide our officers with vehicles to attend to our city and municipal streets and highways, and in order to enforce the trails they would need to have snow machines. This added cost to taxpayers could be avoided, as OFSC wardens are ready and willing to take on the task at hand to ensure OFSC permits are affixed to all

snow machines on OFSC trails. The legal issues, including registration, insurance and impaired driving, would still be in the hands of the police but the legality of having a trail permit could be monitored and should be monitored by OFSC wardens.

It seems that the communities that are surrounded by the most crown land and have the smallest population centres from which to draw permit revenue are the ones that have the hardest task of enforcing permits. The time has come for all parties to work together for the betterment of snowmobiling quality of life and tourism.

In conclusion, for 30 years snowmobile trails have been developed, built and maintained by volunteers. These volunteers recognize the enjoyment their time and dedication has brought to their fellow community members and families. As community-oriented individuals, they also understand the benefit to their community businesses that benefit directly from snowmobiling. Motels, gas stations and snowmobile dealerships all see the direct economic impact, especially in a season where many of these establishments have a hard time to get by.

Communities also see the benefit. It is hard, in many northern communities, to keep a business going throughout the winter, yet many community members depend on these local businesses for employment and the necessities of life. Organized snowmobiling goes hand in hand with the development of strong communities. Now is the time for the provincial government to recognize this and provide the volunteers with Bill 101, including the component of OFSC mandatory permits.

Once again, I thank you very much for the opportunity to speak today. I'll address any questions.

**The Chair:** That leaves us about two and a half minutes per caucus. This time we'll start with the Liberals.

**Mr Gravelle:** Thank you very much, Ms Tulloch. It's really a good illustration, I think, of what the volunteers actually do. Your example of the Lake Superior Family Snow Goers is a perfect example of some of the things you do in terms of building the bypass around the swamp, and it has to be done. It's important and it helps out everybody. It's very clear that you obviously are supportive of the mandatory trail permits, for the reason that you want to have some kind of funding.

I appreciate very much, and I think everybody does, your efforts to try and deal with the traditional users issue. It seems that you have come up with an idea in your presentation, which is, in essence, they could be administered by the local club. I'm not sure you're 100% going that far in saying it, but it seems to me that you came pretty close. Because you know the area and the people, that might be a way of finding a legitimate way of doing this. That's the question we've been coming to all the time: how do you find a way to fairly do it? Do you think that is the way it could be done?

**Ms Tulloch:** I think that is the route that probably has to be taken. The discussion previous to my presentation talking about, if they have the equipment with them obviously they're going fishing or prospecting or whatever—that's an awful burden to put on a police officer,



for them to have to try to make that judgment call as to, are they going or aren't they? You're going to run into more difficulty. They're going to be laying fines and then you're going to have these people going to court, trying to fight them in court. Is that really necessary if we can find a way to administer a non-fee permit through a local snowmobile club or a district office and have it done through that route?

1530

**Mrs McLeod:** Just to follow that up, given the fact that there's already some tension between traditional users and snowmobilers, would you have some concerns that there might be a fair bit of conflict in snowmobile clubs actually administering it, given the fact that the snowmobile clubs need some money, they need to issue many permits, so the traditional users might think it's not in the interests of the snowmobile club to give too many exemptions and there could be a fair bit of conflict around that?

**Ms Tulloch:** I imagine there probably would be and maybe another route to take would be having the snowmobile clubs and municipal representatives form a committee to see to this. I do believe that in the area I live in, which is Schreiber, our traditional users, trappers etc, work very well with the snowmobile clubs, so I don't see that we'd have the same problems as maybe other areas.

**Mrs McLeod:** You all have to live together on Monday morning.

**Ms Tulloch:** It's a small community and we can't be at each other all the time.

**Mrs McLeod:** I guess the other question I would have is, I have some awareness of how often dangerous a conservation officer's work is and I'm a bit concerned about the suggestion that OFSC-trained wardens would be the enforcement officers. I guess you're assuming paid people, not volunteers, at that point, but even then is it not asking a fair bit of people who might not be in the position that conservation officers are to deal with conflict situations in the bush?

**Ms Tulloch:** Honestly, I don't think so. From a personal standpoint, I'd be more than happy to go out and volunteer my time to warden the trails without any fear of what would happen. Generally, people aren't out there to cause problems. If conflict did arise, there would be training in place that you'd know what to do, how to do it and when to leave the scene. The wardens would not be there to enforce anything but the permits, so I don't think the conflict would necessarily be as strong, as long as there was good publicity of the fact that you have to have a permit on these trails.

**Mr Bisson:** I like your suggestion in regard to a non-fee permit, that the traditional users would have to apply in order to utilize the trails. That seems to work and you're able to administer that a little bit easier. I think that's a good suggestion the committee can work with.

The other issue, I guess, to ask is—there are two parts to this question—do you see this legislation actually creating a whole bunch more revenue, other than increas-

ing the trail permit cost to me, the snowmobiler? Do you really see this leading to more money in the coffers, and if so, what do you estimate it is? Because I already go out and get my permits and I'm just wondering, what are we going to end up with at the end, as clubs?

**Ms Tulloch:** There is going to be added revenue that will come in from mandatory permits. What the total amount is I really couldn't tell you. Not only would it be from local riders, but non-resident riders. I don't know how many are out there riding without permits at this time.

**Mr Bisson:** That was my next question: Do we have a sense of that? Do we have a sense of how many people are utilizing the trails and don't purchase permits? Is it 10%, 20%, 30%?

**Ms Tulloch:** Sorry, I can't answer that.

**Mr Bisson:** I've got a request. I'm a two-machine person, but I'm the only rider in my family. The other machine is for a friend or somebody who shows up from out of town on a weekend. It's my old machine that I never bothered getting rid of. A lot of us, around campfires and other establishments, will sometimes talk about this issue of having a tiered system of permits for that kind of situation, not where my wife and I are both avid snowmobilers and we both pay our tickets and maybe, rightly or wrongly, we pay the same price. But for those types of situations where you keep a second machine for occasional use, are you contemplating or would you contemplate some sort of amendment that would allow that to happen?

**Ms Tulloch:** Personally I wouldn't. One snowmobile is going to do as much damage to a trail as another. Whether you're using it on an occasional basis or not, that's your choice.

**Mr Bisson:** But you know what I'm getting at. You have two machines—a short-track and a long-track. For different reasons you want to use different machines, and you have to pay two trail permits, even though you only use one.

**Ms Tulloch:** But what happens in the case where you've got a family that's saying the same thing, yet they've got both snowmobiles out on the trail on a continual basis? To try to monitor that, I think, would be a nightmare.

**Mr Bisson:** I take it your answer is no.

**Ms Tulloch:** No.

**Mr Bisson:** We're just going to have to work on this issue for my reasons. Thanks a lot.

**Mrs Munro:** Thank you very much for coming here today to give us your views.

One of the continuing questions through the presentations that we've heard is the issue of use as a defining issue in terms of a permit. I certainly like the suggestion you have provided in having a permit that allows for a different kind of use.

But I guess my question, first of all, is: Would you see that as a good definition, that the end the snowmobile is being used for should be a way of defining the categories?



If I can just help you, you've talked about the need for traditional users. You've implied by that that you recognize there are people who use the trails for specific uses. All I'm asking is, would you use that definition of "end"—is it recreational or is it a specific use?

**Ms Tulloch:** I guess that depends on the way we look at traditional users. Are they historical traditional users, or if I buy a new camp that I have to access by a groomed snowmobile trail, do I now become a traditional user?

**Mrs Munro:** That's exactly why I asked the question.

**Ms Tulloch:** That's going to be very difficult. We have a cottage ourselves, and we have more than one route to get there. But if I choose to take the trail, should I be required to buy a permit? That is very difficult to answer.

Personally, I feel that they should be required to buy a permit. Traditional users—we're talking trappers, prospectors, who have had those lines for a number of years—should be provided access. I don't know exactly how all that works, but I'd hate to see numerous people go out and get traplines or prospecting licences just so they don't have to purchase trail permits. I honestly can't see it happening, but I guess the possibility is there.

"Traditional use" is still a real stumbling block, and I can't honestly give you a perfect answer.

**Mrs Munro:** I do appreciate the complexity of the issue, and that's why I asked. I think you'll know from the previous discussions we've had in explaining the fact that this has only had first reading and it is the purpose of this process here to get that kind of feedback from you. I think it is a question that there needs to be some understanding, particularly the kind of example you provided. If that has been a traditional use, ie getting to a cottage or camp, does that mean a new person has a different, or the same, opportunity? I think we need to hear from you—plural—on responses to those kinds of issues.

**The Chair:** Thank you very much for taking the time to come before us today. We certainly appreciate your comments.

#### THUNDER BAY ADVENTURE TRAILS

**The Chair:** That takes us to the Thunder Bay Adventure Trails presentation. Good afternoon and welcome to the committee.

**Mr Brett Rushton:** Thank you for the opportunity to speak today. I welcome you to Thunder Bay and district 16 of the OFSC.

My name is Brett Rushton and I am marketing director for Thunder Bay Adventure Trails, as well as operations director for district 16 of the OFSC, which runs from White River to Thunder Bay. I also sit on the OFSC trails committee, as well as being an OFSC driver-trainer. But mostly, I just love to snowmobile. I average between 4,000 and 5,000 miles a year riding on the trails.

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When all is said and done, I'm a volunteer. Last year I volunteered between 1,700 and 1,800 hours, between snowmobiling, air search and rescue, Canada Trust's

Friends of the Environment committee and in my own community. This type of involvement is not uncommon among snowmobiler volunteers. We do it because we love this sport of snowmobiling and we usually volunteer in our other interests also.

I started snowmobiling in 1977, and in 1984 I bought my first permit. It was an OTBA trail permit, which was the Ontario Trail Builders Alliance, and rode in the Muskokas. By 1987 I was asking questions like, "Who is paid to cut the trails and make them smooth?" I was astonished to find out volunteers did it. I got so much enjoyment out of snowmobiling I decided it was time to do my part. It started with brushing and signage and within a few years I was on the board of the local club. In 1995 I got a job transfer, by choice, to Thunder Bay and it did not take long to become involved at the local club.

I have snowmobiled all over Ontario, at least 10,000 miles though Quebec and across Canada as part of Rendezvous '98 ride, so believe me when I say I know the mindset of the touring snowmobiler.

Thunder Bay Adventure Trails snowmobile club has 2,000 members and grooms over 750 kilometres of trails. District 16 has nine clubs, approximately 4,000 members and grooms about 2,800 kilometres of trail. District 16 is the largest district in the OFSC. The OFSC has 281 clubs, 115,000 members and grooms approximately 49,000 kilometres of snowmobile trails.

You may ask, who is the OFSC? I will tell you: it is 281 local snowmobile clubs and their members and we make the decisions of our own destiny. Our mandate is to build and maintain organized, safe and environmentally friendly snowmobile trails. We have built, and groom, some 49,000 kilometres of trails. We, the OFSC, have been in business for 34 years. In 1989 we amalgamated with the OTBA to form one organization and one voice for snowmobiling in Ontario.

We have built this sport into a billion-dollar industry in Ontario on the backs of volunteers. Yes, there are some paid people in the sport, but the majority of the work is done by volunteers. Last year, 73 Thunder Bay Adventure Trails volunteers logged 7,000 volunteer hours. Of that, 20 people logged over 5,200 hours. The same scenario happens all over the province, so when I tell you that volunteer burnout is a serious problem, you can see why. Our most precious assets are our volunteers and our landowners.

We also appreciate the businesses that support us. Our revenue is based on the user-pay system, which means every person who rides our trails should buy an OFSC permit. Last year we, the OFSC, took in approximately \$13.8 million in permit sales, but this covers only about 50% of the cost of building, maintaining and grooming the snowmobile trails. Volunteers must make up this shortfall with their labour, resources and fundraising at club and OFSC level.

The problem is only compounded in underpopulated areas with even more limited volunteers and resources. This must somehow be reduced so as not to break the backbone of this industry: our volunteers.



What does "mandatory permits" mean to the OFSC? It simply means that anyone riding groomed OFSC trails must have a permit. It has been misunderstood that it is every registered sled in the province; this is not what we want.

We, the OFSC, have asked the government for their help, to make OFSC mandatory permits enforceable, even on crown land. We support an OFSC mandatory permit but the final authority of handling and revenues must remain with the OFSC. OFSC mandatory permits must be an absolute, and easily enforceable on OFSC trails.

However, we do recognize that reasonable accommodation must be made for traditional users on crown land. Trained OFSC trail wardens must have the authority under the Motorized Snow Vehicles Act to enforce mandatory OFSC permits. Another way the government might help is to give up a portion of the revenue from the snowmobile registration fee, as they do in Quebec.

Impacts of tourism: First, I would like to thank Thunder Bay Tourism for its help over the years, not only in Thunder Bay but in our district. We appreciate that they can see the big picture. We know the impact of tourism is great. Wawa says the impact last year was \$3 million and I understand it was \$20 million in Timmins. One needs only to ride the trails in Muskoka on a weekend to see the impact, where some businesses are busier in winter than they are in summer.

The purpose of a snowmobile club is to groom and maintain trails for its permit buyers, most of whom are local. We realize that touring snowmobilers are a great benefit to the businesses, but not all the businesses contribute to the local club. So tourism can be a two-edged sword.

The effects of tourism on snowmobiling are twofold. OFSC permit sales are based on "Buy where you ride," but when a person from Muskoka comes up to Marathon to ride because of lack of snow, overcrowded trails or just for different scenery, the majority of the permit dollars remain in Muskoka where they bought the permit, which puts a big strain on the small resources of the Marathon club.

Someone from another snowmobile club brings in very little revenue to the local club. They bring good dollars to the businesses along the way. I know for a fact, based on a 200-mile day, the touring rider must spend between \$180 and \$200 a day. The constants are accommodation, food, fuel and oil and the fact that a snowmobiler brings little else with them other than a wallet. An out-of-province rider offers a permit sale to the local club as well as the \$180 to \$200 a day to the businesses. If the districts share their out-of-province permit sales, all clubs can win.

The north shore of Superior's main market lies south of the border, where there are approximately 800,000 registered sleds in Michigan, Wisconsin and Minnesota. Many of these people have complimented us on our safe signage, good grooming and uncrowded trails. We have

an awesome product in northern Ontario: our vast wilderness. It is quite possible to see moose, deer, lynx, mink, wolves, owls, eagles and hawks along our trail system.

The economic impact has not reached its full potential in this area due to the lack of a proper border crossing to and from the United States in Minnesota. One problem lies in the municipality of Neebing, where I happen to reside. They have passed a bylaw banning organized snowmobile trails within the municipality, thus preventing us from reaching the international border crossing at Pigeon River.

The other problem lies at Gunflint Lake, the Canada-US remote border crossing southwest of Thunder Bay. Currently it is only legal to cross into Canada with a remote border crossing permit. We are desperately trying to get a telephone reporting system in, such as the one at Lake of the Woods. We would certainly appreciate any help the provincial government could offer.

The current and past governments have invested approximately \$24 million in snowmobiling, but these dollars were at 50 cents, meaning the clubs had to match the money to get it. This was done in many cases with operational dollars and has severely strained most of the clubs. My own club had to turn back \$200,000 this year because we couldn't come up with the matching dollars. We are one of the larger clubs in the province with over 750 kilometres of trail to groom and we have had to lay off both our paid employees. This puts a greater strain on the volunteers.

Some of the expenses we ran into: a grooming tractor and drag, \$150,000—our club owns three; a 300-foot-plus bridge over the Pic River near Marathon, which we plan to build this year, \$600,000.

With the province downloading many operations, why take on the administering of permits? Please leave this up to those that have been doing so for 34 years. I hope you can read the emotion in my voice for this great sport of snowmobiling.

I leave with several points to consider: the final authority on all matters and processes relating to OFSC mandatory permits must remain with the OFSC, especially the use of permit revenues; the OFSC mandatory permit must be absolute and easily enforceable; we must recognize the accommodation for traditional access on crown land; and trained OFSC trail wardens must have the authority under the MSVA to enforce mandatory OFSC permits.

#### 1550

These are some notes I've made along the way in your questions. The permit price, currently at \$120 for the early bird and \$150 for the regular season permit, is cheap. Unless we see more dollars and not just this mandatory permit—this will bring in some more dollars, but there needs to be some operational dollars to keep that price as cheap as it is. As for a family membership—I know Gilles mentioned a family membership—I sit on the trails committee and we review this year in and year out. We would love to do so. We don't have the resources to be able to do it at this time.



As an organization ourselves, the OFSC trails committee, under the direction of the board of governors of the OFSC, has been looking into reworking the trail matrix. The trail matrix is how we designate dollars from the permit dollars that each club receives. We have three factors that make this work. We take the total kilometres of a club, their permit sales and the season length. We must have checks in place with a trail audit—we've done it this winter—and groomer logs so the data is 100%. That's how we determine what monies the clubs receive. We hope at next year's convention to unveil the new matrix with these checks in place.

As far as tourists from the United States coming into Ontario snowmobiling, I've spoken to many of these tourists on the trail and at US shows. They are quite astonished when you first hit them with a \$120 permit, but when you explain to them exactly what that goes to—and we don't receive any gas tax or revenue from registration, which most of those states do—they really don't have a problem with that \$120. Most of them are quite pleased with what they see when they get up here.

In Minnesota, I have had a lot of dealings with the past president of MnUSA, which is the Minnesota United Snowmobile Association. They currently get gas tax and some registration money. But on their money there are strings attached, and the government tells them how they can spend that money, which is very difficult. With an organization such as the OFSC, which has been around for 34 years, we know where the money needs to be spent.

I thank you for your time and welcome any questions.

**The Chair:** We have time for a very brief question from each caucus. This time it will start with Mr Bisson.

**Mr Bisson:** My question is very simple. Should we have looked at, rather than doing it on the permit side, mandatory permits, going to revenue streams by way of fuel tax and registration fees, or should it have been a combination of them both? I'm just curious.

**Mr Rushton:** In my opinion, a combination of both.

**Mr Dunlop:** Thank you very much, Brett, for that very comprehensive report. I've got a bit of a conflict on snowmobiling. I have a son who is something like yourself. He's really into the volunteering, although I think this group of young guys, the volunteers just south of Muskoka, do it because they love to build bridges and bulldoze trails, out all summer and that type of thing.

One of the things I was curious about, when you talk about the economic benefits of the snowmobile industry, is why you don't include things such as the actual construction of snowmobiles, the manufacturing of trailers and trucks. The guys I see snowmobiling who are hauling snowmobiles up to Kapuskasing are spending a lot of money in the industry as far as their trailers, their trucks, and the money they spend year after year on basically brand-new equipment, almost on a yearly basis. I'm interested if you have any comments on that.

**Mr Rushton:** I agree with you. The reason it's not in there is time. I could have spoken since 1 o'clock on snowmobiling. Yes, I agree with you, there's a huge im-

pact. A billion dollars in Ontario probably doesn't touch upon everything, for sure.

**Mrs Bountrogianni:** Thank you for your presentation. My question is, what advice would you give the government, and if you haven't got the answer right now, what is the government thinking with respect to solving the problem of the Muskoka example? You buy your permit in Muskoka but you use the lands up here for snow trailing and the money remains in Muskoka. Do you have advice for the government on how to administer that? If not, which is fair at this point, what discussions have taken place on the government side to end this unfair distribution?

**Mr Rushton:** As I said, with this trail matrix, we are addressing part of that right now, but I definitely would say we could use some more operational dollars to help out the other areas in the province. The small communities are in a tough bind, the Beardmores and the Longlacs. It's a tough go when you don't have much money or many businesses that could contribute. We're very lucky in Thunder Bay that way. There's a huge volunteer base of businesses.

**Mrs Bountrogianni:** May I extend that question to the government for a very small answer? Have you had discussions on this at any level on the distribution of the fees if this passes into law?

**Mr Spina:** Yes. If I may, Mr Chair, one of the elements of the discussion is that if the province is going to have the final say in the setting of the fee structure, then it also wants the accountability to be clear right back to the minister, as opposed to just within the federation. Their current structure now is quite comprehensive and fairly complex. They assign a point system, as was described yesterday—in fact, I think you alluded to it today, Brett—of categories of clubs in terms of need and then they redistribute their funds. This is just a simple way of describing it. They redistribute the funds according to the need on that point system. It's fairly complex. We haven't gotten into it that deeply as government ministry people, but clearly what we want to see is that if we get into mandatory permits at all and the minister is responsible for the fee, then we want to ensure that there is an equalization formula there that will benefit the smaller clubs.

**The Chair:** Thank you very much for taking the time to come before us and making a presentation today.

TOM QUINTON

**The Chair:** That takes us to our final presentation of the afternoon, Mr Tom Quinton. Good afternoon and welcome to the committee.

**Mr Tom Quinton:** Always leave the best to the last. You will also be pleased, because I think it's going to be the shortest presentation.

My name is Tom Quinton. I'm just making a brief presentation in as a volunteer and, may I also add, as a traditional user for the last 30 years.



About seven years ago, while traveling by snowmobile to my cottage north of Schreiber, I experienced something that has profoundly affected my life ever since. For the first time, I was sledding on a 16-foot-wide groomed trail. For 25 years previous to this, I had been snowmobiling on small, local bush trails normally infested with monstrous moguls, which confined me to my local area. I immediately went out and purchased an OFSC trail permit. I was astounded by what I came across. Not only were the trails now groomed, but many new trails were built. Then I came across the bridges. At this time I realized that I must get involved to keep this system functioning.

I've been a volunteer all my life in many organizations. Little did I know at this time to what extent I would become involved over the years with organized snowmobiling. Since 1993 I have served my local club in many executive positions, as well as spending hundreds of hours preparing and grooming the trails in our area. At present I sit on the board of the OFSC as governor for district 16. I'm still a full-time volunteer and I hope to continue in this role.

I commend the government for bringing forth Bill 101. I fully support the changes reflected in all the safety matters of the bill. My only concern in regard to enforcement is the fact that a trail warden should be able to enforce the trail permit, as do police and conservation officers.

1600

My main concern with Bill 101 rests with subsection 2.1(5), where it states: "The minister may give authority to any person to issue trail permits and ... may authorize and fix the fee to be retained by the person." The OFSC has fixed the fee and issued trail permits for about 20 years and must continue to do so. As an OFSC volunteer, I find it totally unacceptable that our permit, which has been the backbone of organized snowmobiling in the province, could be totally controlled by the government or given to another user group. We have, and must continue to have, an OFSC-controlled permit. I'm sure that I speak for thousands of volunteers in our 281 clubs that if the day comes that we don't control our permit, then we as volunteers will simply walk away.

Our system has been built by volunteers and sustained by them. Please give us the tools to build and sustain the best snowmobile trail system in the world. Yes, we need mandatory permits; however, the issuance, fee and enforcement must be largely controlled by us, the OFSC volunteers.

I thank all those responsible for allowing me the time to submit this oral presentation.

**The Chair:** That certainly allows us time for a question from each caucus, starting with the government.

**Mr Spina:** Mr Quinton, I'm just trying to make sure I clearly understand what you're saying here. You want mandatory permits but you don't want the government to control how they're set, how they're implemented and how they're enforced?

**Mr Quinton:** Not totally. The key word there is "totally." When I first read that clause, "The minister may give authority to any person to issue trail permits," I shuddered, because that's taking away what we have been doing for the past 34 years. We did not ask for that; we asked for some sort of sustainability. Yes, the OFSC and the government have to work together on this, and I understand that the final judgment perhaps has to come from the minister. But I'm very concerned that what can be read into that is that our trails could be given out to some private groups for personal gain.

**Mr Spina:** Tell me what difference this may or may not make if the whole mandatory permit section of the bill was deleted in terms of legislation but it was—clearly the federation has the authority now within its own constitution. Essentially, you have a mandatory trail permit system now; it's just not enshrined in legislation. If that was removed and Bill 101 went forward as strictly a safety and enforcement bill, would that make a difference?

**Mr Quinton:** Would that make a difference to what?

**Mr Spina:** To achieving what the federation would like to see achieved.

**Mr Quinton:** No, not totally. As a federation and as a club and as a governor, I'm still in favour of mandatory permits. But if we, as the OFSC, must have control over those mandatory permits in terms of initially stating what the fee will be and where the funds will be disbursed, if the mandatory section is taken out of this bill, would the bill be a total disaster? No. I fully support, and I haven't heard anybody speak against, the safety parts of the bill. I fully support that.

**Mr Gravelle:** Tom, it's been great that you're making your presentation this afternoon. Especially because you are the last presenter, I want to even explore some other aspects of funding.

Certainly it's very clear that, like all snowmobile clubs or districts, you need the funding in order to continue to do what you want to do, which I presume is in essence why you're supportive of trail permits, particularly mandatory trail permits, as a means of having some guaranteed revenue.

I was watching when Brett was making his presentation recently too in terms of the government's 50-50 funding. I recall being very involved in the fact that when there were 50-cent dollars available to snowmobile clubs it was really difficult for smaller organizations to access that because you had to raise the dollar in order to make a dollar. So there were real problems, the point being that you need to have some kind of guaranteed revenue.

Is it fair to say that we should be looking perhaps at other ways of gathering revenue? There are other jurisdictions where a certain percentage of gas tax, for example, goes towards this process. There is something that the province of Quebec does—a portion of their permit fee. Is that something that we should be discussing as well? There's no question that today the controversy has been, how do you enforce the mandatory trail fees, and who should be using them and who



shouldn't be accessing them? So I thought we'd use this opportunity to get your thoughts on that. Should we be looking at other ways of providing funding to the snowmobile clubs that do all this extraordinary amount of work?

**Mr Quinton:** Yes, we should, and I think that has been addressed by past speakers in support of that. But if I could go back to the first part of your question, you mentioned about "mandatory." I like to interpret "mandatory" as being fair: If you travel the trails and if you use the trails, then you should pay for the trails. I understand the traditional user. I'm a traditional user. I have been a traditional user for years. I helped build the trails initially. But the trails are much different today than what they were 20 years ago.

**Mr Gravelle:** It's part of what you said, I guess. Yes.

**Mr Quinton:** It's the OFSC members who mainly support and keep those trails in good travelling condition.

I hear by the deliberations today and I've heard for years in regard to traditional users, most traditional users are permit buyers. They support what we do. The traditional users are the backbone of a lot of our clubs. With any club there are a few freeloaders. I feel very strongly that freeloaders should be forced to pay by mandatory permits.

Our trail system has been built by hydro roads, some logging roads, not many, along the north shore of Lake Superior. But most of the trail system was built by our club. We had to connect all these different areas. It's interesting to note that whenever we make a change on a trail to go around a swamp, to fix a rough spot, the traditional user I've never known to go on his traditional trails; he always uses the new trail. I have a problem with that, but I understand the traditional use and I know there has to be a lot of discussion around some of those issues.

**Mr Gravelle:** You're supportive then of what Nancy Tulloch was saying earlier too—

**Mr Quinton:** Very much so.

**Mr Gravelle:** —which was that the local organization, which knows the people, would have a much better chance of being able to find a solution to the problem in terms of the people who are truly traditional users. There would be less likelihood of abuse or whatever if it was managed on that local or regional level.

**Mr Quinton:** That certainly works in small towns. I cannot speak for, say, a large area like Thunder Bay, a large club, because between downtown Thunder Bay and downtown Shebandowan you've quite a distance and I'm sure you're going to have some differences of opinion.

**Mr Gravelle:** I still maintain that the government should be finding some way of having a portion of the fees going back to the club, simply on the basis that it's clear that this is an extraordinary economic boom for the province. We know it's great in terms of the tourism

industry, and I don't think it should be left simply as something that's there for the mandatory permits to actually be the total funder for the process.

**The Chair:** Mr Bisson?

**Mr Bisson:** I have no questions, other than a business matter, because they have already been raised by the other caucuses.

**The Chair:** Thank you very much, Mr Quinton. I appreciate your bringing your personal and governorship perspectives before us here today.

**Mr Quinton:** Mainly personal.

**Mrs McLeod:** May I ask a very quick question? I know you're packing up to get to the airport. I apologize, because when local members sub in, we go over ground sometimes that's already been gone over, but I just need personal clarification. I think Mr Spina said that under current regulations a mandatory trail permit is required for both residents and non-residents?

**Mr Spina:** Current regulation of the OFSC. It's within the OFSC.

**Mrs McLeod:** But not under provincial legislation.

**Mr Spina:** No, it's not a provincial, it's an OFSC—

**Mrs McLeod:** So it's an expectation of the clubs, as opposed to a requirement by provincial regs.

**Mr Bisson:** Chair, as you know, tomorrow I'm not going to be able to be in Timmins for the hearings in my own community. Unfortunately, my travel date has been moved up. As you know, I'm travelling to Edmonton on other parliamentary business on behalf of my constituents and my travel date has been changed by your minister to a day earlier. So it makes it impossible.

I'd like to present the committee with this letter that you can read tomorrow, and I stand you on guard on record. You will read the letter when you arrive in Timmins tomorrow, as I'm not able to do that. It's the first time that's ever happened.

**The Chair:** You get more flies with honey than vinegar. I take it you're asking me to read that letter tomorrow.

**Mr Bisson:** I am asking, but I want it on record.

**The Chair:** I would be pleased to accede to a request to do that.

Is there any other committee business? If there's not, thank you to all those who made presentations today and to those who just came to watch the proceedings. I'd certainly invite any follow-up comments, questions, suggestions from anyone in the audience or elsewhere in the community. We've got a few weeks before we go back to Queen's Park and do the clause-by-clause consideration and we certainly appreciate all the views that have been expressed here today.

The committee stands adjourned until tomorrow in Timmins.

*The committee adjourned at 1611.*







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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 31 August 2000

# Journal des débats (Hansard)

Jeudi 31 août 2000

## Standing committee on general government

Motorized Snow Vehicles  
Amendment Act, 2000

## Comité permanent des affaires gouvernementales

Loi de 2000 modifiant  
la Loi sur les motoneiges



Chair: Steve Gilchrist  
Clerk: Viktor Kaczkowski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Thursday 31 August 2000

Jeudi 31 août 2000

*The committee met at 0906 in the Cedar Meadows Resort, Timmins.*

MOTORIZED SNOW VEHICLES  
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI  
SUR LES MOTONEIGES

Consideration of Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement / Projet de loi 101, Loi visant à favoriser la durabilité des pistes de motoneige et à accroître la sécurité et les mesures d'exécution.

**The Chair (Mr Steve Gilchrist):** Once again for the record, I call the committee to order on the third day of hearings for Bill 101, the Motorized Snow Vehicles Amendment Act, 2000. The first order of business—actually, it's for the second time, but just to make sure Hansard records that I did it even once, for when Mr Bisson gets back—is that he indicated he wished to have a letter read into the record. I will be pleased to do that.

"To the Chair and members of the committee conducting hearings on Bill 101,

"I am sorry I am not here to welcome the committee to Timmins this morning. I have been unexpectedly called away to deal with an urgent constituency matter.

"Please convey my regrets to the members of the committee and to all of the presenters. I understand Timmins has the greatest number of submissions to be heard by this committee, and I look forward to reading the documents and the committee minutes when I return.

"Sincerely,

"Gilles Bisson, MPP

"Timmins-James Bay."

Just to expand on that, it's my understanding Mr Bisson is travelling at the behest of Minister Sampson out to Edmonton to look at some matters related to prisons. I'm pleased to see the level of co-operation between opposition members and ministers of the crown.

CHAPLEAU AND AREA  
TRAPPER'S COUNCIL

**The Chair:** With that, we're pleased to welcome, with apologies for the technical delay this morning, the first presenter, the Chapleau and Area Trapper's Council.

**Mr Richard St Amand:** Honourable members, ladies and gentlemen, my name is Richard St Amand. I am the president of the Chapleau and Area Trapper's Council. I am appearing before this committee today to express our concern with Bill 101 and the fact that there is no exemption from trail permits granted to trappers. We find this totally unacceptable when you consider that trappers were not consulted at the time these trails were developed. We have had to endure considerable hardships as a result, such as stolen traps and furs, vandalism and increased traffic over our lines.

In the Chapleau district alone, we have 111 registered traplines. Approximately 20% of these lines are directly impacted by snowmobile trails. Many of these snowmobile trails are on old trappers' trails or on abandoned roads that trappers have developed and used for generations. Now we are being told we must pay yet another fee or face a penalty of \$200 to \$1,000. This is unfair and unjust.

The fur harvest industry contributes in excess of \$15 million annually to the provincial economy through fur sales and royalties. This industry played a key role in opening this country many years ago.

The front-line trapper, as well as the fur harvest industry, has had to adapt and adjust to pressures from a number of different sources:

The first is the image of the trapper—the selected and controlled harvesting of wild fur, that trappers be seen as conservationists and also providers of valuable information to biologists on various animal species and habitat.

They have had to conform to international humane trapping standards in the types of traps that are being used now and in the future.

They must conform to new boating regulations.

They must conform to new gun licensing and registering regulations.

In the future, they will have to deal with the creation of 378 new parks and protected areas, as recently announced by the Premier, and the impact this will have on trappers.

Trapping licences have increased 400% since 1997.

Royalties paid to the province have increased 10%.

Trappers must constantly deal with the fur market uncertainty.

They must be concerned with the timber harvesting practices in their area and the impact this will have on their particular lines.

They must also be concerned about the animal rights groups and the impact of their activities and views on the fur harvesting industry.

Last but not least, the provincial government has failed to recognize the significance and contribution of the fur harvesting industry when considering its new hunting and fishing heritage act.

I have actively trapped on a registered trapline west of Chapleau for almost 30 years. To access my line, whether by truck, ATV or snow machine, I have traditionally used an abandoned road, as well as a road that is maintained by a local roads board. Portions of these roads are now groomed snowmobile trails. Trappers who use these trails are not doing so for recreational purposes but simply to access their lines.

In conclusion, on behalf of the trappers whom I represent, we are strongly opposed to the legislation in its current form and feel there must be an exemption granted to trappers.

Thank you for the opportunity to address you today, on behalf of the Chapleau and Area Trapper's Council.

**The Chair:** Thank you very much, Mr St Amand. That gives us lots of time for questions.

**Mr St Amand:** Attached to this, on the last page, I have included a list of the registered traplines that are directly impacted by the snowmobile trails that pass through the Chapleau area. I also have a map that clearly marks out the registered traplines in the Chapleau district and the snowmobile trails that pass through them. If anyone would care to have a look at it, I will leave it with the committee; I was only able to get the one map from the MNR.

**The Chair:** You are the first to offer such a visual aid. We appreciate that.

As I say, there is lots of time for questions. Since we don't have any representative from the NDP here today, we'll split the time between the two parties. This time we'll start with the Liberals.

**Mr David Ramsay (Timiskaming-Cochrane):** I'd like to thank you very much, Mr St Amand, for your presentation. Your industry has made us well aware of the concerns of trappers, and you're right: at the moment, I think there is a deficiency in the legislation that does not recognize the historic presence of trappers in our bush in northern Ontario and how, as we develop the trail network, many of the trails that trappers had made to get to their lines became incorporated into the trail network as the simplest and easiest way to develop a network.

I think there's certainly room here to accommodate you, and I don't think we would really find any resistance with the people in the snowmobile industry. I think that has to happen. Your member, Mike Brown, happens to be the Liberal critic for this bill and he certainly shares your concerns. I know he'll be moving amendments to this bill that would recognize your industry. I just wanted to assure you of that.

I don't see this as being unfriendly to snowmobiling or the government. These would be helpful amendments, and that's why we're out here early, just to find out these

deficiencies. So nothing is carved in stone. Especially now, at this stage, the legislation is very flexible and we're really here to get input and make it better, and your advice makes it better. Thank you.

**Mr Joseph Spina (Brampton Centre):** We appreciate your coming forward with your position, Mr St Amand. I just want to clarify section 9 of the bill. It's really as a result of the input we received from the fur harvesters' council and from some other organizations as part of the original discussion paper, which we sought feedback on. As a result of that feedback, there was a section put into the bill which amends section 26 of the Motorized Snow Vehicles Act. It says that regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or regulations, and regulations may also be made general or particular and different classes of persons may be identified for exemptions from the act or regulations. So while it doesn't specifically identify trappers—or anglers and hunters, because the same position is taken by them—this clause in the bill does allow for exemptions to be identified for certain users of the trail system on a limited basis. I think that's really all the trappers are worried about, that you have the access to the system that you have now. There was never any intention to change that.

**Mr St Amand:** Will those changes be implemented in the act or in the regulations that are going to follow the act?

**Mr Spina:** The act is amended as it has been drafted for first reading. The bill already has this section, which I just read to you, allowing for classes of machines and classes of individuals. To specifically identify those classes and individuals, that usually comes in the regulations. I just wanted to clarify it.

Thank you for your input.

**Mr Garfield Dunlop (Simcoe North):** It's a pleasure to hear your comments. I have a question—and this has nothing to do with snowmobile trails; it's on trapping licences. I just want to make sure I'm clear on this. Are you telling me that trapping licences have increased 400%? Four times as many people have taken out licences since 1997?

**Mr St Amand:** No, I'm saying the licence fee itself that's paid by the individual trapper for the privilege to trap—

**Mr Dunlop:** Oh, the fee has increased. I thought the number of licences had.

**Mr St Amand:** No, it is the fee that has increased. In addition to that, there are a number of other fees that trappers must pay to belong to the Ontario Fur Managers Federation, to belong to the North Bay fur harvesters and also to belong to the Chapleau and Area Trapper's Council. All these fees have to be paid by the trapper.

**Mr Dunlop:** I'm sorry; I wasn't clear on that.

**Mr St Amand:** It's not as if trappers are making bundles of money at the industry. Most of them are doing it out of tradition. They enjoy it, they've been doing it for years and the fur market fluctuations haven't really



impacted on whether they're going to trap or not. They trap. They're in the bush, and I think they provide a valuable service.

**The Chair:** No other questions?

Thank you very much, Mr St Amand. We appreciate your taking the time to come all this way to make your presentation before us today.

#### MIKE FARR

**The Chair:** Our next presentation will be the Timiskaming Abitibi Trail Association. Good morning. Welcome to the committee.

**Mr Mike Farr:** Good morning, ladies and gentlemen and honourable members of Parliament. My name is Mike Farr. I am president of the Timiskaming Abitibi Trails Association, but I'm asking to speak today not as president of that association but as a volunteer, on behalf of the volunteers of the 14 other snowmobile clubs in my district, which is district 14 of the OFSC. It runs from New Liskeard to Timmins, actually up to Iroquois Falls and down to Chapleau. We've even got Shining Tree and some other spots a little bit to the south of us in the association.

As you are probably aware, the 280-odd snowmobile clubs in the province are all volunteer-driven, non-profit organizations that operate snowmobile trail systems on the goodwill of private landowners. The operation of those trail systems is solely funded by the user-pay system that we currently have. The sale of OFSC trail permits by each of the clubs is basically the only operating revenue that those clubs have. No government, municipal or other funding is available for any of the club operations for grooming or maintaining trails.

Over the past 30 years, our clubs have evolved from small pockets of local riders who have formed small clubs and secured permission from private landowners to build trails for their neighbours, their friends and their families to enjoy. Those new snowmobile clubs relied totally on the sale of local club memberships to raise enough money to cover the cost. Dollars raised from the sale of those permits of course were used only for developing and maintaining trails with the volunteer component. In the early days, nobody was paid for anything. The development and maintenance of these trails served as a welcome outing and a hobby for the volunteers who gave their time and, in many cases, their own money to subsidize fuel costs, cost of repairs and the like and of preparing trail systems.

0920

In the early 1990s, as clubs matured, most joined the Ontario Federation of Snowmobile Clubs to effectively extend their own riding area for their own members, as well as open up their own trails for members of other clubs to enjoy. It was at that time the OFSC, recognizing the inconsistent development levels between clubs, embarked on the innovative partnership with the provincial government known as Sno-TRAC. Sno-TRAC, the snowmobile trail rehabilitation and construction program, was

indeed a welcome opportunity for the clubs to construct new trail, upgrade existing trail and upgrade expensive grooming equipment.

Sno-TRAC, as great an opportunity as it was, was somewhat overwhelming for the volunteers of the clubs. Many dollars had to be raised to meet matching funding requirements of this new program. The clubs took on the challenge and in our own district alone were able to raise more than \$1 million locally to match dollars in the Sno-TRAC program to make the infrastructure of the trail systems work. With dollars committed, the clubs set out to build hundreds of kilometres of new trail and upgrade hundreds of kilometres of existing trail. Capital improvements over the next three years would see approximately 15 new trail-grooming tractors and drags and approximately 20 new bridges, anywhere from 20 to 80 feet long, completed in this district alone. The next three years put enormous pressure on the volunteers to complete their individual projects and, for some clubs, even more years to get ahead of the debt loads they had accumulated.

The commitment from the Sno-TRAC program and the fruits of the efforts of the dedicated volunteers have been felt in local economies throughout our entire district. Economies that were predominantly dormant during the winter months are now booming due to the influx of snowmobile tourism.

Although businesses and communities see the positive impact, unfortunately the volunteers at the local snowmobile clubs are looked on to provide a better and better snowmobile riding experience for the visitors. The only revenue volunteers have to meet this responsibility is the revenue generated from the sale of trail permits. Trail permit revenue in this district represents approximately 50% of the revenue needed to produce, sign and maintain the trails each season. Club volunteers, private and corporate donations and special fundraising events are relied upon to make up the shortfalls.

As we enter the new millennium, I'd like to congratulate Joe Spina and his task force in the province for the excellent paper the committee has been able to produce. It's obvious that Mr Spina has endeavoured to capture the true picture of snowmobiling in Ontario and specifically its pluses and its shortfalls.

The translation of the needs of organized snowmobiling from the task force report to what's been presented in the first draft of Bill 101, in my opinion, is nothing less than a travesty. The implementation of the trail permit system as depicted in the bill, under the total control of the Ministry of Transportation within their current policies, will be a huge step backwards for the sport of organized snowmobiling.

When the volunteer clubs asked the OFSC to try to secure mandatory permit legislation, they were simply asking that the efforts of the volunteers and the contributors to the trail systems were acknowledged and that the users of the maintained trails were legally bound to contribute to trail maintenance by purchasing a trail permit.



It's never been the intention of the snowmobile clubs to be the sole user of the great outdoors in the wintertime. Traditional users have, in many cases, provided the routes on which snowmobile clubs have developed and maintained trails. All of our clubs respect the rights of those traditional users, whether it be access to a favourite fishing hole or trapline or access for their business.

That being said, traditional users most often are avid club members who enjoy the ability to use a well-maintained trail to access their particular sport, and in many cases gladly support the maintenance by buying a trail permit. The volunteer component, combined with the goodwill of private landowners, is absolutely critical to the continued success of the snowmobile trail networks in this province.

Bill 101, as it's presently drafted, takes away the control from the volunteers who ultimately, without the control, will lose their motivation. This loss of volunteer motivation will be nothing less than catastrophic. It could ultimately destroy the success of the snowmobile tourism industry in the province of Ontario.

Bill 101 is an opportunity to truly unite many partners from private, municipal, corporate, government and tourism avenues. Bill 101 needs to be looked at as ground-breaking legislation and should not be forced to fit within existing policies of provincial agencies where it cannot fit.

In closing, as a parts manager at a GM dealership and a snowmobiler, I beg you to see that Bill 101 is amended to protect the volunteer component of the snowmobile clubs and the OFSC and not be allowed to kill the sport of snowmobiling in Ontario. Thank you.

**The Chair:** Again we have lots of time for questions. This time, I'm going to start with the government. Mr Dunlop.

**Mr Dunlop:** In the Timiskaming Abitibi Trail Association you've got 14 clubs and you look after 3,300 kilometres.

**Mr Farr:** That's right.

**Mr Dunlop:** Roughly speaking, how many members would be volunteers and how many members would that actually include? We've heard a lot about volunteers over the last two days and their contributions to this system. I'm just curious in this particular system.

**Mr Farr:** All clubs are volunteer-driven. Their executive boards range anywhere from six to 15 people who are volunteers, who work generally through the year organizing and preparing for the winter season. During the winter season, there could be as many as 20 people in each individual club who put up signs, brush the trail. In many cases, we still have volunteers who actually drive the groomers. Trail groomers are large pieces of equipment. I'm sure most of you are familiar with what they are: a 10-foot-wide farm tractor with a big drag on the back, 45 feet long. These guys get into these things. In my own club in the Tri-Town, I think the shortest groomer run that we have takes about eight hours; the longest is 14. We've got some clubs in this district and surrounding districts that have 20-hour runs, where an

operator has to get in that piece of equipment, drive it 10 hours down range and drive it 10 hours back.

Some of those clubs still operate as volunteers. It's an incredible amount of volunteer effort that goes into this.

**Mr Dunlop:** Roughly 20 volunteers per club in 14 clubs, so about 280 people would be the number of volunteers?

**Mr Farr:** That would be accurate. Probably through the winter there are special events, different things that involve 50, 60 or 70 volunteers in some of the larger clubs at any one time.

**Mr Spina:** Mike, thanks for your comments about the work we had done—we appreciate it—and thanks for coming forward today. I had a couple of questions. First, I want to go back to Sno-TRAC. I think that was around 1992?

**Mr Farr:** Yes, 1991, 1992, 1993.

**Mr Spina:** OK. You commented that the next three years put pressure on volunteers to do the job and then more years to get ahead of the debt loads they had accumulated. What's the current status now of the clubs in your district in terms of that debt load? Is it pretty well done or is there still some outstanding?

**Mr Farr:** I think probably the Sno-TRAC debt load should be pretty well covered. The Safe Smooth Trails program, the things that I've learned to love and hate, have put the pressure back onto the clubs again. I'd have to say that the clubs in this district, as things have evolved in the last 10 years, are pretty broke. They're constantly looking for additional avenues to try and meet the funding requirements, to try and get the SST funding in place. It's constant. It's an ongoing thing. I'd have to say that basically if they had another five million bucks, they'd be in better shape.

0930

**Mr Spina:** Essentially these have been capital costs, expanding, maintaining, building the trails, getting the groomers equipment and so forth, but none of this has really gone toward operations. That's still volunteer. Is that still why a lot of the clubs are in a shortfall, because of the money they're spending in operations that they don't have?

**Mr Farr:** Actually, that's a very good point because the money that would be budgeted by a club for grooming operations and possibly to pay that groomer operator to go that 20-hour run is money that they have used to do the capital project. Bridges and trails and groomers obviously are very important things and they have to be done. The money has to come from someplace, and if the only money the club has coming in is from their permit revenue, then unfortunately the operating money gets used for that and then the volunteer component has to make up the slack.

**Mr Spina:** Last question: you talked about the mandatory trail permit and the autonomy that the federation and its clubs would like to have. I'm asking a question here and I'm not trying to put you on the spot, Mike. If you're not comfortable answering it, don't worry about it. If mandatory trail permits were not adopted, what alterna-



tives would you recommend or suggest be considered toward the sustainability of the system?

**Mr Farr:** Mandatory permits I think are not going to solve all of the snowmobile clubs' problems. Mandatory permits are going to provide recognition that the work of the volunteers and the clubs is recognized provincially and that if you're on a trail you need to have a permit. Basically, that's where mandatory permits come from.

The amount of additional revenue in our area or in our district that I can speak about: between our clubs we feel that between 80% and 90% of the folks that ride the trails in this district do in fact have a permit. So the actual issue of mandatory permits isn't going to bring a lot more dollars in.

There are funding issues in the province that need to balance revenue maybe a little bit better. The OFSC is currently working on a number of things with that in mind, so I see some improvement coming there.

Dollars in the system: provincially and in our district, 50% is probably the number of dollars available to do the job, 50% of what's required. There's considerable municipal and corporate sponsorship that clubs use. I think that as time goes on we're going to have to find more ways to get money into the system. Mandatory permits are going to help but they're certainly not going to fix everything.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Good morning. Thank you for your presentation. What is your opinion of the actual fee recommendation, the actual amount, \$150?

**Mr Farr:** The \$150 trail permit price that's set right now by the member clubs of the OFSC—it's not set by the OFSC; it's actually set by the clubs and the OFSC ties it together and makes it happen for us. The \$150 permit fee in the province right now is probably underfunded by about 50%. If that fee was \$200, we'd probably be closer to what it actually costs to provide the trail systems. Unfortunately, the market that we have in the world we live in can't bear the permit price much higher than that. When you have families with two or three snowmobiles and the economy the way it is, the \$150 price is probably as high as we'd like to see that right now. But to answer your question, it's too small a number to do the job.

**Mrs Bountrogianni:** So again, it's the funding that's the issue.

**Mr Farr:** Funding is the issue.

**Mrs Bountrogianni:** Another quick question: you talk about retaining control and that the task force report—and I just took a very brief look at it—was a lot different than what the legislation shows as far as the actual action. How would you, if you retained control, however, ensure that the distribution of the funds is fairly done across the province? In other words, right now if you get a permit from one club, I understand, you can just get the permit there but then use it in many other clubs. Therefore, the clubs whose trails you are actually using don't get those funds. You're probably already doing it and I just don't know, but how do you look at that?

**Mr Farr:** The current system that the OFSC uses tries to make the best distribution of the permit dollars, and through the development funding programs and through some of the other programs of the OFSC there is money turned indirectly back to a lot of the clubs that have small permit bases and really are not in a position to fund things on their own. But the OFSC is taking that further. They've got some things coming forward at their meeting this fall that will actually change the whole way that permit revenue is dealt with in the province if the clubs adopt that way of going. If that happens, permit dollar revenue should be able to be balanced within the province so that all the clubs will have access to the same kind of dollars. That will be a big improvement. It won't fix everything either, but it will be a big improvement.

**Mr Ramsay:** Thanks, Mike, for your presentation. It's nice to see you. I was a little concerned about your comments when you talked about the MTO control. I think it's an interesting point because it seems in the very opposite direction that this government usually tends to go, that in this case the government wants to take control of this away from a volunteer, community-based group, where we've seen basically the philosophy of this government is to download or transfer responsibilities to users, municipalities etc. I guess the concern might be that if the MTO took this over, down the road this responsibility may be transferred off to some third party, like drivers' licences and that. I would like to hear a little more what your sense is of what MTO taking this away is going to do to the sense of ownership by the volunteers.

**Mr Farr:** I'm not as familiar with the actual discussions that have taken place with the OFSC task force and the members of the committee and MTO. All I really can talk on is what I've been given to understand. If the sale of permits, control of the permit price basically goes under Ministry of Transportation control, then it's going to be perceived by the volunteers of the clubs that they are in fact volunteering for the provincial government. It's also going to be perceived by the private landowners that they're providing trails for the provincial government.

Obviously the volunteer burnout issues are there all the time, and they always will be, are critical, but the landowner issues are so sensitive, with thousands and thousands, probably tens of thousands of landowners in this province. Private landowners, who don't receive five cents for providing their trails or their property for the trails, all of a sudden are going to perceive that they're doing this for the provincial government. I think attitudes are going to change considerably and a lot of people are going to start saying, "I don't want anything to do with that," and walk away. It won't take very many folks walking away and it will all be gone.

**Mr Ramsay:** So basically the trail network, by and large, when it goes through private land, is only there because of the relationship between the local volunteers and their neighbours who own the land, and it's that relationship that keeps it going, so it's a very tenuous relationship. If this was disrupted by fee permitting going



to MTO, then there is a dislocation of that relationship. Now it's government and people rather than people in their neighbourhoods, in their areas, working together. I understand that. I think that's quite valid. I think there is maybe a lack of understanding of how this all developed, and it's really relationships on the ground, literally.

**Mr Farr:** It is, the whole thing. The OFSC, as great an organization as it is, is only as good as the volunteers and the one landowner at the very grassroots level, and that's what we have to protect. By turning control of the permitting over to the Ministry of Transportation we've essentially taken the control away from that volunteer and that private landowner.

**The Chair:** Thank you very much for taking the time to come before us here today. We appreciate your comments.

0940

#### LUMLEY MARKETING AND LEISURE EVENTS

**The Chair:** Our next presentation will be by Lumley Marketing and Leisure Events Ltd. Good morning and welcome to the committee. You have 20 minutes for your presentation.

**Mr Don Lumley:** Good morning. I'm sure everybody has a copy of my presentation. I'll start off with the first sheet, which is really a profile sheet to establish my credentials so everybody knows where I'm coming from when I talk.

Presently I'm president of the Canadian Snowmobile Hall of Fame and Museum, which is a federally incorporated body. We're working on a project in the Sudbury area to build a museum and hall of fame. I spent three years as president of the Canadian Council of Snowmobile Organizations, during which time I spent two years as chairman of the International Snowmobile Council which oversees both the Canadian council and the American council and represents 27 states and the 12 Canadian members. I'm just going to highlight a couple of the items; I'm not going through the whole thing—three years as president of the OFSC, and that was from 1992 to 1995, when Sno-TRAC occurred. I was also the founding president of the Northern Ontario Snowmobile Association, which was probably the lead agency that got most of northern Ontario going from 1990 to 1992. Then I was also the founding president of the Sudbury Trail Plan Association for five years. Back when Sno-TRAC was just forming, I was a voluntary team member of the consulting firm that developed the northern Ontario snowmobile development strategy that led to Sno-TRAC.

I'll start with the sheet that you wanted up front, which is a summary of conclusions and recommendations, and then I'll do the justifications after that.

First of all, Bill 101 is a good bill. The enforcement changes and a mandatory trail permit are positive enhancements to snowmobiling and are most welcome. More dollars are needed on an ongoing basis from an operational perspective to sustain and enhance the Ontario

snowmobile trail system. It was asked, "What else could be done?" I've mentioned that a provincial snowmobile registration rebate should be considered. That happens in other provinces.

Legislated mandatory OFSC trail permits will be good for snowmobiling in Ontario, but any legislated mandatory trail permit must be administered by the OFSC and its member snowmobile clubs to retain its effectiveness. Snowmobiling in Ontario must continue to be administered and maintained by the dedicated snowmobile volunteers to sustain the existing high standards. All revenues generated from the sale of mandatory trail permits must remain with the not-for-profit snowmobile organizations to be reinvested back into the product as they see best. They are the trail experts.

Mandatory trail permits will require more enforcement authority than at present. Police, STOP officers and properly trained OFSC trail wardens should all be empowered to enforce the act. When we get into questions, if somebody wants to ask about the Quebec system, I can relate to that.

Any transfer of authority or responsibility for the trail permit and trail product will adversely affect the quality of the trails and therefore would jeopardize the relatively high level of safety that we currently have on trails. People might question that, but it has been proven. I guess the most classic example is the recent government funding of SST, Safe Smooth Trails. There is a direct relationship there. Any depreciation of trail quality will also lead to a reduction in the total number of snowmobilers who participate in this lucrative recreation—fewer riders, less money.

Just very briefly on the company that I have formed—and actually I'm talking here both as the president of my own consulting company and probably as one of the most active snowmobilers in the province—some of the work projects include contracting as a snowmobile consultant. My client base stretches from coast to coast and includes some of the snowmobile manufacturers and some international snowmobile after-market manufacturing companies. I've worked for some of the other provincial snowmobile federations and clubs and also consulted with other government agencies.

From a personal perspective, I've snowmobiled for over 32 years, with well over 250,000 kilometres of riding experience in all forms of the sport, mostly long-distance touring. I have done the racing scene and do mountain riding out on the west coast. I've snowmobiled in every province of Canada and the Yukon. There are only two territories I've missed so far. I organized and led the first snowmobile trek across Canada, from Newfoundland to BC in 1998, with a group of 16 riders. I've snowmobiled in eight of the US states, which include their largest snowmobile destination areas: Michigan, Wisconsin and Minnesota. In any given year, I have probably put on four to five times the provincial average of kilometres ridden.

For a North American snowmobile overview, snowmobiling in North America has one of the largest and



most dedicated group of volunteers you'll ever come across. I've always related to the fact that what we do occurs over about a two-to-three-month period, where in Canada alone there are over 100,000 kilometres of trails that are laid out and put away for the summer. That's not a true reflection, because the work does go on for 12 months of the year.

In the US there are 27 states that have organized snowmobiling, with about 2,400 snowmobile clubs. In most of these states snowmobiling is either administered by the government or is some form of partnership with their volunteer organization. While the total ridership of the snowmobile states is much larger than in Canada, the total number of federation or club memberships is significantly lower, proportionately, than what we have here: about 70% less, which leaves them with less volunteer assistance to draw on. The reason is snowmobiling is looked at as a recreation owned and provided for by their governments.

In Canada, there are about 920 snowmobile clubs, on average, every year, with about 275,000 user-pay members. In every province and territory, snowmobiling is administered by a volunteer organizational structure, much the same as what the OFSC has in Ontario. Only one province, Manitoba, has a true legislated mandatory trail permit.

Manitoba's federation, which is called SnoMan, is entering into its seventh year of operation with a mandatory trail pass. Currently, about 90% of the province's snowmobile trails are designated as Sno Fund trails. The other 10% and some secondary, independent club networks are covered under local membership fees. Retail of the trail pass is still administered by the federation, with local clubs turning all money back into the federation, which then turns it in to the government for redistribution back to the clubs, but that does not occur until the following year. This formula redistribution caused a limited amount of hardship for some of their clubs during the first year of implementation because it left them with no trail pass revenue for that season. The only reason that Manitoba was able to implement the process was because most of the clubs were in their infancy at that time and trail pass revenue was not a major funding source for the clubs. There are about 18,000 registered snowmobiles in Manitoba and SnoMan sold approximately 10,000 trail passes this past year, of which only 4,000 became club members; 6,000, or 60%, of those people just paid the required fee and went snowmobiling.

I've listed what I consider the top three quality snowmobile trail systems in the world, and many people would agree with me. Some might disagree on the order of them, but I've listed them as Quebec, Ontario and New Brunswick. There are no state trail systems that are in this top three, and most of this is the perspective from either Americans who ride in Canada or Canadians who have ridden in the States, the reasons being: our self-administered, dedicated volunteer-based system; our pride of ownership of our trail product quality; our greater number of user-pay members to draw on who

become club volunteers because of the peer ownership of the trails; all revenues generated through the user-pay funding are returned back into the product; snowmobile volunteers generate the extra revenues required, sometimes up to 50%, to maintain the trail system; and government can't compete with a non-paid, volunteer private sector.

Specific to Bill 101, it's described as An Act to promote snowmobile trail sustainability and enhance safety and enforcement. The latter part of it, "to enhance safety and enforcement," it certainly does, and does it well. The first part, "to promote trail sustainability," is a move in the right direction but it still doesn't cover enough. I'm more concerned with some of the things that are not in the bill that I'm hearing about.

There's no question that a legislated mandatory trail permit required on all OFSC trails will assist the federation and its member clubs to generate more base revenue. The grey areas of whether or not a trail permit is legally required in some areas would be eliminated, leaving only the understanding that if I'm snowmobiling on an official OFSC trail, then I must pay for that right and have a permit. Any recognized traditional trail user exemption is a given on this. I think most of the speakers you'll hear from will state that as well.

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But implementation must be done right and for the betterment of snowmobiling in Ontario. We have a golden opportunity here to offer to the whole world of snowmobiling an example of government and volunteer partnering that defines and addresses the needs of the sustainability of a lucrative, economically beneficial recreation.

Ownership and responsibility for the sport of snowmobiling must remain with the dedicated, hard-working volunteers who have built and fine-tuned the system over the past 40 years. You'll probably hear 30 years from a lot of other people, 30 years being the existence of the OFSC, but in reality, for almost 10 years prior to that there were clubs forming snowmobile trail systems throughout Ontario.

The control of the trails, the trail permits and the revenue generated from the sale of the trail permits must be retained by the OFSC and its member clubs. To remove any of this from club control would threaten the entire operation of snowmobiling in Ontario. A recent member research study, conducted by an outside consultant for the OFSC, revealed that 88% of snowmobilers are most satisfied with the ease of purchasing trail permits that is now offered to them. This was the highest-ranked item of satisfaction of the eight items that were queried under this section of the study.

Currently, 100% of the revenue generated from the sale of trail permits remains with the selling club or the OFSC. The money goes back entirely into the trail product in the form of trail enhancements, trail equipment acquisition, insurance coverage etc. A very small portion is used for administration and marketing. Unfortunately, as efficient and effective as the volunteers



are, the permit revenue source does not cover the full cost of operation. In some cases, there's a shortfall amounting to upwards of 50% of the cost of doing business. Where does this shortfall get made up? Again, it is from the club volunteers who fundraise the extra dollars and supply free labour to build, groom and maintain the trails. The snowmobile market could not bear the full cost of the product at this time, nor will they be able to do so in the future. Snowmobiling will always require a significant amount of volunteer input to remain successful, and the government should do all in its power to assist these goals.

The snowmobile clubs of Ontario must also retain the right to set the price and structure format for trail permits as it currently exists. They are the only ones close to the retail base who can determine what the customer will be willing to pay. This has proven successful over the years.

Bill 101 does not spell out that snowmobiling is dependent on organized volunteerism, nor does it protect their right to the funding source from the sale of trail permits. It can be said that this could be established under a memorandum of understanding, but that in itself does not secure those rights for the OFSC and clubs. If any other body were to be granted the right to sell or administer the trail permits, the following could happen: snowmobile trails would be seen as government-run. There would be less volunteer commitment. There would be no incentive for the clubs to generate the required extra funding. Overall, there would be less dollars going back into the snowmobile product, which would then create a Catch-22 situation, resulting in less ridership, ie, permits, and less economic generation, along with trail product deterioration.

Bill 101, as far as enforcement goes, as previously mentioned, does a very good job of addressing the safety and environmental enforcement concerns of snowmobiling. I do, however, have two issues to address along those lines.

The first one is that mandatory trail permit enforcement will require much more manpower than already exists and is committed to the cause at this time. Bill 101 should include agents of the police such as STOP officers and properly trained OFSC trail wardens to assist with the additional workload. This would result in a most cost-effective use of enforcement manpower and is the only way to achieve the success needed to ensure compliance.

The other concern relates to complementary amendment number 11, where the owner of a snowmobile can "be held liable to the fine provided under this act." I realize that happens under our Highway Traffic Act, but my concern here is how this could adversely affect the snowmobile rental business whereby an owner would be held liable for 20 or so snowmobiles not under his care and control. In Ontario, our snowmobile rental business is, at best, fragile and underdeveloped, and Bill 101 should not make any conditions which make this worse than they already are. Just as an example, in Quebec every year there are over 3,000 rental units that go out and generate economic revenue. In Ontario, we have

estimated there are about 400. There is a significant difference, yet the demographics are very similar.

In conclusion, there's never been anything in Ontario, or anywhere else for that matter, that can compare to the province-wide economic success of a "business" like snowmobiling that has been developed, enhanced and maintained for almost 40 years and that is totally run and funded by volunteer efforts. The amount of economic wealth that is shared over almost the whole province and by so many varied businesses is unprecedented. These same dedicated volunteers are the real trail-building experts and the only force capable of continuing to deliver the world-class trail product required to sustain this lucrative business of snowmobiling in Ontario.

The government of Ontario has been an enviable partner of snowmobiling throughout the years and has wisely invested in its development. The financial return has been also been very significant in the form of government revenues from taxes—ie, sales, gas, income, hospitality taxes—and without much effort and manpower to date. One would have to question the logic of the government getting more involved in the administration of snowmobiling and committing more government resources with no increase in profits. This would also set a very bad precedent for other user groups of volunteers in the province.

There's no question in my mind that the continued success of snowmobiling in Ontario is totally dependent on a strong partnership between the OFSC and the Ontario government along the lines that have occurred in the past. Thank you for your consideration and time.

**The Chair:** Thank you, Mr Lumley. You timed your 20 minutes almost perfectly, almost to the second. We do appreciate very much you taking your time and certainly some of your experience, bringing your views before our committee here today.

**NORTHERN CORRIDOR DU NORD  
SNOWMOBILE ASSOCIATION,  
DISTRICT 15**

**The Chair:** Our next presentation will be from the Northern Corridor du Nord Snowmobile Association, district 15. Welcome to the committee.

**Mr Dominique Perras:** Good morning. I am Dominique Perras, president of the Northern Corridor du Nord, which is an organization that represents nine clubs in the OFSC district 15. I am also a volunteer at the club level in my jurisdiction and, more importantly, I am an avid snowmobiler.

Throughout the province of Ontario, as you probably all know, our association is in favour of mandatory permits. We have been talking about that for many years. I would like to thank the government for their interest in this issue. I would also like to thank the organizers of this hearing committee for giving us the opportunity to talk in front of you about the pros and cons our organization has on these matters.



Most of the clubs, members of our association, have been participating for the benefit of snowmobiling in our region. For the past 30 years, volunteers have made the trails, organized fundraisers to gather enough money to maintain the trails and, more specifically, promoted snowmobiling throughout the province of Ontario.

Let me tell you that those volunteers are proud of what they have accomplished. There are 281 snowmobile clubs in Ontario. However, it would be very hard to come up with the number of volunteers in Ontario who work at keeping this system of trails in place since there are so many. It is all these clubs that have created the OFSC, a group of volunteers who work together toward a common objective: to promote snowmobiling as a safe and smooth ride.

In those years, snowmobiling was more likely a local riding experience, riding within a 10-to-15-kilometre radius. Since the improvement of the sleds by manufacturers and the more comfortable riding on the trails, it has become a province-wide activity. It's not rare to meet people on the trails in northern Ontario who come from Ottawa, Toronto, Michigan, Minnesota and also from Quebec and Manitoba.

1000

This is why mandatory permits have become necessary, so that volunteers can have some help to maintain the trails and enforce laws for a smoother and safer ride. After all, without the considerable expense and efforts made by the OFSC and its volunteers, snowmobiling trails would not exist in Ontario.

All we want is fair treatment, and we think that all snowmobilers who use the trails should contribute to the cost of upkeep. It is definitely not our intention to let go of our trails, to give them up so they are administered by a different body than the OFSC. As I said a while ago, we are proud of what we have accomplished.

It is not our intention to walk away from our trails. What we want is a partnership with the government to help us raise enough money to maintain and groom the 49,000 kilometres of trail in Ontario.

The main reason for mandatory permits is to give a chance to every snowmobiler in this province to participate in the upkeep of those trails. Our club association is already putting \$20 million a year toward these trails. This money is raised through the sale of OFSC trail permits.

We certainly do not want to put a barrier on other groups such as trappers, Hydro workers or government employees who have to use the trails to make a living or to upkeep facilities that are necessary for the betterment of the population in general. However, if these people are going to use our groomed trails, we think they should participate in the cost of maintaining our trails. Those workers will enjoy the privilege of using better, safer, smoother, faster trails while performing their jobs.

In conclusion, I would like to add that if we do not have the support from our local, provincial and federal governments in a partnership of some kind, it will become very hard to continue the task of maintaining the

trail system. I wish to emphasize that if permits become mandatory under legislation, then the management of such an endeavour should be given to our association, the OFSC. We have already proven that we have the expertise, the experience and the willingness to do so. I doubt that volunteers will join the government to maintain our trail system.

As for the tourists who ride our trails, we can only ask them to participate if we have the support of the government. If the government enters in a partnership with the OFSC, it will help to maintain better trails that will be safer, smoother and enjoyed by everybody.

I would like to thank you again for listening to my presentation, and I hope you will consider all I have said, hoping to have favourable news soon.

**The Chair:** Thank you very much for your comments, Mr Perras. You have certainly left us some time for questions, and this time the questioning will commence with the Liberals.

**Mr Ramsay:** Mr Perras, it's nice to see you again and thank you for your presentation.

Your presentation reflects a theme we're starting to develop here this morning, and that is the sense that while we need the government to come in to ensure we have mandatory trail permits so that we have a good income stream generated by the users, it's important that the government recognize that this still is a voluntary system and that they shouldn't take this away from the volunteers.

I take it from your presentation that this is a bit of your fear, that maybe this legislation goes too far. Is it that the MTO would take over the permitting, collecting the fees and issuing the permits that concerns you, that that part of the money coming in distances itself from the volunteer base and the perception will be that it's just a sort of government network, like a highway system, and why should we as volunteers be part of this? Is that the concern?

**Mr Perras:** Yes, that's really what it is. All those volunteers have been working for many years, as I mentioned in my presentation, and they still want to be involved. But we'd like some help from the government, say, in the form of mandatory permits, to help us maintain these trails and sometimes make these trails more enjoyable for people, to make them easier to make in the fall and all that. We need some money to do that, and we have to get that money somewhere.

**Mr Ramsay:** I was heartened by comments that Mike Farr made earlier, hinting that basically the federation was even going to adopt a greater sense of sharing of the permits among the clubs across the province at their convention this fall. I know that's a real problem, especially for areas like yours, where you have a large trail network and a very modest number of volunteers and members. In comparison, a club in Barrie would not have that much of a trail network and yet a lot of members. And, of course, a lot of those people use your trails up there.



I'm glad the federation has recognized there has to be a greater redistribution of the money, so that where most of the ridership takes place, which is in northern Ontario because of climatic conditions and because of the vast geography here and the number of kilometres of trails, we need to have more money up here. I think the federation is really starting to recognize that and is going to do that. But I think the theme consistently has been that still more money is needed, and I was wondering if the government or our research has figures on the tax revenue that snowmobiling provides the government. As Mr Lumley stated previously—and we did have numbers there for gas, hospitality and sales. He also mentioned income. Maybe that would be hard to break out, but I wonder if we have that or if research can get that, because I think there's obviously a pot of money there that this industry generates that really, like any other industry, should be reinvested to ensure sustainability. I think that's important.

Do you think there's more money needed in the system as a whole?

**Mr Perras:** Yes, there is more money needed. I didn't mention what snowmobiling in Ontario is generating for the province. I didn't talk about it at all, but this has been said many times, as far as I know anyway. I think there is more money needed. I know that the OFSC is trying to redistribute the money in better ways. Sometimes it does take time to come up with the best formula in the world, or in the province, to share the amount of money that is there.

Since there are quite a lot of snowmobilers who do ride our trails without a permit of any kind, all these volunteers want is somebody to enforce the law, that if it does become mandatory, well, there will be somebody to enforce the law and all that.

**The Chair:** Mr Dunlop.

**Mr Dunlop:** I have a couple of quick comments. I notice on page 4 of your presentation that you mention possible support from the federal government. I was curious, following Mr Ramsay's comments here as well, that there are revenues generated by the province, but there are a lot of revenues generated that go toward the federal government as well.

Have you got any further comments on that? It was a question I might have liked to ask Mr Lumley earlier. He had a lot of interest in the Canadian trail system, and of course we do have a system that goes right across the country. But, seeing that the federal government puts nothing into our Trans-Canada Highway system, do you see a role in this case for the federal government to put anything into the snowmobile system?

**Mr Perras:** Yes, I do see a role for the federal government too, and it's already in there. We are organizing our district now with coordinators, especially in the north, and the federal government is helping in a way. We had some grants from the feds to do things that needed to be done, and I think the federal government should get involved, because they're making a lot of money out of that too. It's generating money for the

federal, the provincial and the local governments and, I guess, for businesses. All the businesses have been asked to contribute, but we're asking everybody to contribute—the riders too, and the federal government.

**1010**

**Mr Spina :** Merci, Dominique. I'm glad you spoke English because je parle français mal, moi.

**M. Perras :** Moi, je ne parle pas beaucoup d'anglais, mais je suis capable de me débrouiller.

**Mr Spina:** That's the limit of my French.

Dominique, you mentioned about how you endorse or would like to have the mandatory trail permit but the concern is that if the province sets the fee, we would alienate the volunteers. What I'd like to do right now is clarify how the fee structure is set. Right now, within the federation, the fee is set at the annual general meeting—tell me if I'm wrong here. It's a proposed fee, I guess by the governors, and then the delegates from the 280 clubs vote on whether or not that fee is acceptable. So the fee is actually set by the federation and its member clubs. Is that correct?

**Mr Perras:** Correct. You're right.

**Mr Spina:** In the bill, it states that the minister will set the trail permit fee. Is this where the concern is, that if that wording remains, the volunteers will feel as if the power has been removed from the clubs to decide on the fees?

**Mr Perras:** I know there are a lot of people in Ontario stating that this fee is way too high, to ride a snowmobile for from one week to 15 weeks, maybe, in our part of the country. But because of people saying that, if the government decides to have Bill 101 go through and they decide that they'll charge half the price we have now, that means we're going to have maybe three quarters less money to maintain the trails. It is going to be impossible, because we'll have to go through more fundraisers, and there's a limit to fundraising. At my club level—I will call that a parish—it's 300 to 500 persons, so it's impossible to gather enough money to do that. We need that money. Most of those volunteers have been following the OFSC since the start and we have come up with that price because it was necessary, and we wouldn't want to see it any higher, because it's quite high right now. But I think the government, before putting a price on the permit, should consult with the OFSC, because they have the expertise and they've been there for quite a while and they've been running the show. We've accomplished a lot, as I told you a while ago.

**Mr Spina:** If a structure was created where the OFSC would still use that process to set the fee through votes of its delegate members at its annual general meeting as it is now, but the only difference would be that that fee would have to be approved by the minister, would that be acceptable to the membership, do you think? In other words, the OFSC does the same thing it does now except that the fee has to be either accepted or rejected by the minister; but the minister wouldn't say, "This is the dollar amount." The minister would essentially either accept it or, if they didn't accept it, make a recommen-



dation that you should come up with a different figure, and why. Would that be more acceptable to the membership?

**Mr Perras:** It's pretty hard to answer your question now, because I think there are many clubs along the trail that need that money, and more of that money. I know David mentioned a while ago that the OFSC is going to redistribute that money to the best of its ability, but the government will still have to consult the OFSC to make sure we're going the same way, that we're attacking the same problem.

**Mr Spina:** No, I understand. Thank you.

The other element, I guess, that has been under discussion regarding this concept is the issue of accountability, because the Ministry of Transportation is concerned—and it's very similar to the concern that the federation and the district clubs have stated so far in the last couple of days that we've been out, and this morning—that if the ministry sets the fee, as is currently indicated in the bill, even if it's in consultation or at the recommendation of the OFSC, being the representative body of the sport in the province purely because of its size, the province and the ministry would also like to have better accountability to the province, so it knows how the money and the revenues are being spent. Would that be an imposition on the federation? The minister would not only approve the fee set by the members at their AGM, but would also expect some accountability reporting to the minister of how the revenues are distributed to the clubs.

**Mr Perras:** I guess—not I guess; I'm sure—that no club in the province of Ontario is afraid, as far as I know, anyway, of telling the government what they have done with the money they got from OFSC trail permits. It has been spent on the trails and there have been fundraisers over fundraisers to put some more on top of the trail permit sales to maintain the trails and to make the trails easier for years to come, to be easier next year, and working on the trails all the time. I know the government has given \$10 million twice, now, for trails. That was for infrastructure. But if the clubs weren't accountable, they would never have put their share in. Every club that brought a groomer in those years had to put in 50%; they got it somewhere.

**Mr Spina:** Is that our time?

**The Chair:** Yes, it is.

**M. Spina :** Merci, Dominique.

**Mr Perras:** Thank you.

**Le Président :** Merci, Monsieur Perras. Nous vous remercions pour votre présentation.

#### KIRKLAND LAKE AND DISTRICT TRAPPERS COUNCIL

**The Chair:** That takes us to our next presentation, the Kirkland Lake and District Trappers Council. Good morning and welcome to the committee.

**Mr Glenn Harman:** Good morning, Chairperson and fellow committee members. Hi. My name is Glenn

Harman. I am the president of the Kirkland Lake and District Trappers Council. I will also be representing and speaking on behalf of the 80 or so trappers from our district who have the same concerns that I have.

I am here today to voice my concern over the pending legislation, Bill 101.

How can the government legislate the use of the snowmobile trails that were traditionally used by trappers, fishermen, hunters, the forest industry and prospectors at no cost? Some of these trails were used long ago by trappers, before the snowmobile was invented. When the trappers started to use snow machines on their traplines, they widened the trails that they used to snowshoe or use with dog teams. Now, along comes a snow machine club. They widen the trails the size of highways through the bush where our trails once were, then they groom the trails with a land use permit which they obtained from the Ministry of Natural Resources, and say the trails now belong to them. When they obtained the land use permit, the MNR did not consult with the trappers to see if it was OK if the Ski-Doo clubs took over these trails. We were told by the MNR it was a good thing that the club would allow us to use the trails at no cost and they would even widen and groom our trails. Now we've got hundreds and even thousands of snow machines riding on our trails daily. It has become very dangerous out there on our trails. The snow machines have scared our wildlife away with their noise and excessive speeds over 50 kilometres an hour.

#### 1020

Why should the trapper pay to use his original trails? We know that it is expensive to operate and maintain the groomers, but it is not the trapper who needs the trail groomers. The trapper is not the one who wants to speed down the trails; it's the people who drive these very expensive machines. Let them pay. Go after the recreational and tourist outfitters and the Ski-Doo rentals and Ski-Doo club members who use these trails for pleasure. Don't put the burden on the trapper. It is hard enough now to make a living. The trapper only uses the trails to go to his lines and to get around on his grounds. Most times these were his traditional trails in the first place. So why make us pay when we are only trying to make a living and keep a healthy wildlife population?

I have a few questions: Why should the trapper have to pay for the use of his own original trail? Who gave the MNR the right to give up our trails as a land use permit? Who's going to police the trails so when members stray off the trails and use our trails, who will pay us? The club? Why is it such a good deal for the trapper? Now we will have to pay to use our original trails.

I have spoken to private landowners whose private property the trails cross and they say that if trappers have to pay, they will not allow the Ski-Doo trails to cross their private property. Will the government legislate private landowners to keep the trails open? This would cause the Ski-Doo clubs to create more new trails, and it won't be easily done the next time.



In conclusion, please take the time and answer these questions truthfully and not politically. Remember, if Bill 101 goes through, it will cost trappers more money but it will hurt the snowmobile clubs and northern Ontario tourist outfitters even more. Thank you.

**The Chair:** That leaves us lots of time for questions. This time it will commence with the government.

**Mr Spina:** Glenn, thank you very much for coming forward. You have a very clear and succinct presentation in asking your questions. They're very good questions.

I don't know if you were here earlier when I made a comment that there was a clause in the act as a result of the input from the trappers and also from the anglers and hunters. We added section 9 to the bill, which amends section 26 of the Motorized Snow Vehicles Act. It says that regulation-making power is provided for authority to create classes of motorized snow vehicles and exempt such classes from any provision of the act or its regulations. Regulations may also be made general or particular, and different classes of persons may be identified for exemptions from the act or regulations.

In summary, almost in answer to all six questions, it was never the intention of the government to impose trail permit fees on current people who don't pay the fee for traditional uses. Right now, as you know, you have exemptions under the constitution of the OFSC, through their member clubs. You don't pay to use their trails. It would be our intention, if this portion of the bill goes through, that that would remain intact. In fact, it would even protect the trappers more because now that protection would be set in legislation and in regulation. It would be clearly outlined within the law. Right now, it's a nice, convenient agreement between the trappers and the federation. But what I'm saying is that it would now be in paper, in government law, and in my opinion that would be even a better protection for the trappers.

**Mr Harman:** I was talking to MNR just the other day, and this bill was going to definitely say that the trappers were going to be exempt. I think they were looking at doing their own proposal. That's why, if we don't voice our concerns, we'll end up paying.

**Mr Spina:** That's why we appreciate your input. Thank you, Glenn.

**Mr Dunlop:** I just want to make it fairly clear that the intent of the bill, too, is to increase safety on the trails of our province. You made one statement in your presentation that said that it has become very dangerous out there and scared all the wildlife away. That was the second part of my question. Do you see a loss of wildlife because of the trails?

**Mr Harman:** Definitely. Lynx do not like the high-pitched sounds of screaming snow machines, so they've moved off the areas where the trails go through. On one of my grounds, the trail splits my ground three ways. For the last few years, I have seen no lynx in that area. I firmly believe it's because of noise. Excess speeds—my machine goes about 50 kilometres an hour. I'm being passed on curves; I'm being passed on every straight-away. Every sharp curve you come to on the trail, you

see where snow machines have ditched because of high speeds. I talked to the OPP, and they police the trail Monday to Friday from 8 in the morning until 4 in the afternoon. Well, excuse me, that's not when the traffic is. It's after school and on the weekends. It's dangerous to be out there. Fortunately, you guys haven't been reported as many accidents as happened on those trails because of excess speeds. I don't know if it's the Ski-Doo club trails or the snow machine manufacturers that are making these 900cc machines that are only supposed to go 50 kilometres an hour on the trails. Where's the reasoning?

**Mr Dunlop:** I think the snowmobile clubs and the province—everybody wants to see them safe. I don't think there's anybody that's promoting dangerousness in the sport whatsoever. I know that the wardens are doing their best. I just want to make sure that the snowmobile clubs or the OFSC realize here today that we've had that type of comment about public safety being a problem on the trails.

**Mr Harman:** In my years of experience on the trails, I haven't seen a warden out there yet. Mind you, I don't go out on the weekends because it's too dangerous.

**Mrs Bountrogianni:** Mr Harman, thanks for your presentation. It was very succinct and clear. I wonder if you know what is the percentage of your membership at the Kirkland Lake and District Trappers Council that also holds permits with the snowmobile club. Do you have any idea?

**Mr Harman:** No, I have no idea. The point of view of most trappers is, if they're out there for pleasure, they have a membership. If they're using it for trapping, they figure they don't require one. In talking to most of the members, I've never asked them directly how many had membership, but they say, "If we are out there for the pleasure, we expect to have a permit," and I fully agree with that.

**Mr Ramsay:** Thanks, Glenn, for your presence here, coming up from Kirkland Lake.

When I came in I saw that Mr Spina was giving the same answer to you as the representative from the Chapleau trappers about your concerns of trappers being able to use the trail system for their work and their business. The concern I have, and as an opposition party we have, is that his answer is, "The legislation permits a regulation that can be put in afterwards to take care of all your concerns." The trouble I have with that is that I have to trust the goodwill of the government and Mr Spina that they might do that, though we have to trust them to do that. The thing is that any time in the future, this government or a future government could take that away by regulation also.

We will be moving some amendments that will protect trappers in the legislation. I want to see that in the legislation so that we don't just have to go on trust. I know Mr Spina has a good sense of this industry; he's done a lot of work on it with his white paper. But somewhere down the road people may forget why trappers had to have an exemption from permits. With a future government—and it could be done at the bureaucratic level—a regulation



can just be taken away. So we need to make sure that's there.

I want to let you know that Mike Brown, the member from Algoma, who is our critic here, is going to move some amendments that will protect the rights of trappers. So that would be in the legislation.

1030

**Mr Harman:** It's too bad we have to get legislation put into effect for something we used to do traditionally free of charge. Unfortunately, our government has to look at legislation to give us a right we've had all our lives and now we have to have that right legislated. It's pretty sad to see, from my point of view.

**Mr Ramsay:** I understand where you're coming from. I guess what's happened is, like everything else in society but particularly here, this industry, snowmobiling, has now moved from being a hobby primarily pursued at a local level to a transnational industry. It has now become a big part of our economy, and it's an industry rather than just a hobby. Meanwhile, your traditional work has been overtaken by all this.

We need to come to grips with the complications of managing a secondary highway system, which this is. This has basically become a winter highway system in the province, rather than a series of local trails. I want to make sure, as we try to control that and make sure we keep that up and support our volunteers, that people in traditional industries, such as yours, are protected.

I understand what you mean. It's sad that we have to do that. But because of the way this has developed, I guess if we don't get some control on this, people like yourself are going to lose your rights. I want to make sure your rights are in this bill so that they will be protected forever in perpetuity. We're going to be fighting for that, and I hope the government listens.

**The Chair:** Mr Harman, I have a quick question. We haven't heard in the presentations from trappers to date whether they normally would tow their rig in a trailer behind their snowmobile, or can you carry most of your equipment right on the snowmobile itself?

**Mr Harman:** That's up to the individual trapper. I don't like to have a sleigh, because if I get on lakes with slush there is more chance of getting bogged down. But I know other trappers who do use a sleigh. It's the trapper's individual thing. It depends how far he's going on his trapline, if he can carry enough just on the Ski-Doo itself or he may require a sleigh.

**The Chair:** The reason I ask is, yesterday in Thunder Bay we had a suggestion that there would be an easy way, without a sticker, to tell an ice fisherman or a trapper from a recreational user, because they would always have a five-foot ice auger or some other supply of equipment, either on their machine or behind their machine. I wonder if you want to comment on that. Could a warden easily distinguish you from a recreational user because of the amount of gear you'd have on your snowmobile?

**Mr Harman:** I don't think most trappers drive around with those expensive snow machines. They're usually

scratched up and banged up. They're a working machine. They're not out there for speed. Mind you, it would be nice to have some of those machines, but as trappers we can't afford it. For one thing, we're usually by ourselves. Just the gear we're wearing—we're not out with these fancy Ski-Doo suits and stuff. We're usually in more bush-type gear. There's no way to identify us just by looking at us. I don't think most trappers would mind being stopped by a warden and saying, "Yes, I'm a trapper." I don't feel they would have a problem identifying themselves as trappers. Usually they have some equipment on, but who knows? He may just be out checking his land.

**The Chair:** Sure. Thank you very much for taking the time to come before us here today. We appreciate your coming all this way.

**Mr Harman:** Thank you for taking the time.

**The Chair:** Our pleasure.

#### KAP SNO-ROVERS SNOWMOBILE CLUB

**The Chair:** Our next presentation is from the Kap Sno-Rovers Snowmobile Club. Good morning, and welcome to the committee.

**Mr Tony Tremblay:** Good morning. If I sound nervous, it's because I am.

**The Chair:** Oh, don't be.

**Mr Tremblay:** My name is Tony Tremblay, and I'm the president of the Kap Sno-Rovers. I am in favour of mandatory OFSC permits. I want to thank the government for their support and interest in snowmobiling, and to thank you, the committee, for allowing me the opportunity to speak.

I recognize and agree with the OFSC position that there are four cornerstones essential to making mandatory OFSC permits successful, which are final authority on permit issues, permit requirement, limited exemptions and enforcement.

The Kap Sno-Rovers Snowmobile Club and its 900 members feel that the mandatory OFSC permit, including design, production, issuance, sales procedures, pricing and the use of permit revenues, should stay with the OFSC. To surrender control of trail permits would critically undermine what club volunteers have worked 30 years to accomplish only to end organized snowmobiling, groomed snowmobile trails and winter tourism. We appreciate the government's effort to make the OFSC permit enforceable by law.

Clubs and all volunteers have proven over the past 30 years that we have the knowledge and experience to deliver world-class snowmobile trails. The right thing to do is for the government to recognize, reinforce and support the clubs and volunteers and the trail system. This is why we strongly believe the final authority regarding permit-related matters should remain with the OFSC. In the past 30 years, the OFSC has fine-tuned a permit system, which is the matrix system that accommodates both snowmobiling and the snowmobiling



public. To remove this system from the clubs would threaten the entire operation of snowmobiling in Ontario.

As a result of snowmobiling, we have 49,000 kilometres of winter trails, which have been built and maintained by the OFSC clubs and volunteers for upwards of \$20 million each winter, derived from the sale of OFSC trail permits.

Snowmobilers have the choice of riding snow highways for the simple reasons that they are safer, more enjoyable and prevent more damage to machines. With the amount of traffic on our OFSC trails we sustain higher damage, which our clubs and volunteers have to restore at considerable expense. Therefore, everyone riding the trails must have a mandatory trail permit in all areas, whether private or crown land.

In order to have access on crown land, the OFSC recognizes there will be some exceptions, such as OPP, Hydro, MNR and the Ministry of Northern Development and Mines. Also, certain traditional users, such as landowners, cottagers, anglers and hunters, among others, may be exempted, but none of the above should be able to ride OFSC trails for recreational snowmobiling without purchasing a permit. The OFSC could issue a permit locally to identified users.

With 2,500 trained wardens in Ontario, they must have the authority under the MSVA to enforce mandatory OFSC permits. This number of qualified wardens makes a greater presence on the trails than any other enforcement because of their dedication to safety on the trails. Our goal is to band together with government to legislate mandatory OFSC permits by adding police agencies, conservation and STOP officers, not to take away from the 2,500 dedicated wardens the authority to enforce mandatory OFSC permits.

We believe a partnership between OFSC and the Mike Harris government is important. If government controlled mandatory permits, it is unlikely that landowners and dedicated volunteers would continue their involvement with their local clubs. For the growth of tourism and organized snowmobiling, we are requesting that the provincial government continue to support organized snowmobiling with new legislation, with the OFSC having the sole function and responsibility for mandatory permits enforceable by enforcement agencies and OFSC wardens. In doing so, our trail system would be safer and guaranteed for years to come.

I want to thank the committee for your time, and if you have any questions I will try to answer them.

1040

**The Chair:** Thank you very much, Mr Tremblay. This time the questioning will commence with Mr Ramsay and the Liberals.

**Mr Ramsay:** Mr Tremblay, thank you very much for coming. You talk about the limited exemptions here, which I agree with. It looks like the volunteers and the federation really agree that for users such as certain landowners, cottagers, anglers, hunters and trappers, people like that, there should be some limited exemptions. I think everybody agrees on that.

This brings up another concern that I have. While the legislation says the government can regulate different classes of users and try to accommodate these exemptions, again I am concerned that we leave this up to the government and do not come up with maybe a local solution to deal with this. I suppose there would be different ways of handling that and maybe it should be the federation and the local clubs that come up with how that's done. Maybe it needs to be done in a different way in different localities, depending on culture and tradition.

For example, in some areas part of the trail was originally a trappers' trail and the local club, through agreement, has now made that the snowmobile trail through the area. Maybe one way of exempting the trappers in that area is to exempt, officially designate, that part of the trail and therefore needing the permit, so that the trappers who just use that part of the trail for trapping don't have to have a permit. Maybe that's the way to do it there.

Maybe in some areas it's exempting some users, possibly grandfathering the users. Maybe it's now a new trail, but that's the easiest way for the trapper to get to his or her traditional area, so maybe the trapper in that case should be exempted but the trail stays designated.

I was just wondering what you think about this because I can see us having different reasons in different areas to exempt certain people. How do you think we should handle that?

**Mr Tremblay:** I agree with the trappers or the fishermen. If they had a trail existing before the OFSC trail, I agree that they should be exempt. The local clubs should be able to give them a special pass only for that piece of trail. I agree with you on that one, that we should exempt some special people. Like I said in my presentation, the hunters and anglers should be exempt on that special trail.

**Mr Ramsay:** The further south you go, the more private land clubs have to deal with. My guess is that you don't deal with that much private land in your area. Most of it is crown, I would take it.

**Mr Tremblay:** Most of it is crown. We have landowners, but not as many as in the southern part.

**Mr Ramsay:** That's another concern. A lot of the reasoning for landowners to agree to basically dedicate some of their land, or traditional trails on their land, to the trail network has been because of certain traditional users, maybe people going to their fish camp or whatever, or the trapper. If we put this right up at the government level, maybe there wouldn't be the rationale or the reason for the landowner to co-operate any more because now they're dealing with the government and not the local people; it was done more neighbour to neighbour before.

I think it's an area we're going to have to work on. While we need government regulation to make sure that people buy permits and that money comes into the clubs, at the same time we've got to keep the local neighbourly flavour that this thing developed, the relationship between the local club and the landowner. If we destroyed



that, we would go toward destroying the network, wouldn't we?

**Mr Tremblay:** That's right.

**Mr Ramsay:** It's going to be an interesting balance here because we all want provincial permits, but on the other hand we've got to keep local control and club control and that local relationship with everybody that seems to have worked.

**Mr Tremblay:** Let's hope it works because we need the landowners for the network.

**Mr Ramsay:** That's going to be our challenge, I guess, as lawmakers here.

**Mr Tremblay:** That's right. My reason is, we should try to keep the landowners happy to keep the trails going.

**The Chair:** Thank you. Mr Spina.

**Mr Spina:** Thanks, Tony, for coming forward. It's good to see you again.

On the second page of your presentation you indicated: "In the past 30 years the OFSC have fine-tuned a permit system which is the matrix system which accommodates both snowmobiling and the public." That is the first statement. And then, "To remove this system from the clubs would threaten the entire operation of snowmobiling in Ontario." Help me understand what you're getting at there.

**Mr Tremblay:** I think now that the OFSC has the matrix system, the money is allocated to different clubs. But if the government or the MTO would take over, like what is in the legislation now, who will take care of distributing the money to different clubs? With the matrix system, now you send your money to the OFSC and it comes back to the clubs. If you give it to the MTO, how are you going to turn around and give it back to the snowmobiling club?

**Mr Spina:** If the system were allowed to remain in place and were even enhanced in some way, maybe a greater equalization or a simpler equalization formula, so that the money collected would remain within the federation and its clubs and then would continue to be redistributed through that formula or a modified formula, would that be acceptable, the only difference being that the ministry would approve it?

**Mr Tremblay:** Why do you want that many people taking care of a little bit of money we're having from the OFSC permit?

**Mr Spina:** You're talking \$14 million-plus here.

**Mr Tremblay:** But compared to the government, \$14 million is almost peanuts.

**Mr Spina:** OK. I'm just asking whether it would be acceptable if it remained within the system itself.

**Mr Tremblay:** If the OFSC has the control, if the OFSC itself has to deal with the government, as long as the clubs don't have to deal with different governments, if we stay with the OFSC, I'd have to agree with that.

**Mr Spina:** If the clubs continued to deal with the federation and then maybe the federation were the only one that would have to deal with the government, would that be a workable system?

**Mr Tremblay:** It would try to work; I hope it would work.

**Mr Spina:** Thanks, Tony.

**The Chair:** Thank you very much, Mr Tremblay. I appreciate your taking the time to come before us today.

## ONTARIO FEDERATION OF SNOWMOBILE CLUBS DISTRICT 12

**The Chair:** Our next presentation is from the Ontario Federation of Snowmobile Clubs, district 12. Welcome to the committee.

**Ms Janet Depatie:** Good morning. My name is Janet Depatie.

I wasn't here for the first presentation this morning, but from listening to some of the others, I think that mine in some aspects will be a slight bit redundant, but I hope there is something in it that will also give you some more information.

I'll start by giving you a little bit of background about myself. I am a member and a volunteer with my local snowmobile club. I am also presently serving my fifth term as president of the Sudbury Trail Plan Association. That's the association my home club belongs to. I am also serving my fifth year as a governor for the Ontario Federation of Snowmobile Clubs.

In my position as a governor I represent 13 clubs in district 12, and today I'm here on their behalf. The district 12 clubs build and maintain trails in the Sudbury region, in Killarney, Espanola, Massey, Nairn Centre and all of Manitoulin Island. The clubs sell approximately 7,000 permits annually; last season, 6,659 permits. They maintain 2,398 kilometres of trails, and they raised approximately \$1.2 million in the 1997-98 season. That includes permit fees, fundraising, grants, GST rebates etc. It does not include the volunteer labour, the donated equipment or the donated materials.

Each of the clubs produces many social and economic opportunities throughout the year in their communities. In district 12 we have clubs that have anywhere from six to 30 core volunteers. The individual clubs sell from 70 to 1,000 permits and their kilometres of trails vary from 85 kilometres to 519. Their volunteers, like myself—I've served 10 years—tend to be long-term volunteers. I know men and women who have worked with clubs, most assuming multiple tasks, for close to 30 years.

### 1050

I am here to speak in favour of mandatory permits on designated OFSC trails. I am also here to reiterate the OFSC's position that there are four key elements to making the OFSC mandatory permit successful. You've heard those elements. There are four of them. I won't repeat them at this time. I'll save that for the end.

Volunteers have been busy for the past 30 years building a trail system that is amazing. In the 10 years that I have been involved with organized snowmobiling, I have seen tremendous growth and improvement. However, it was prior to my time that the groundwork was



really begun. The pioneers of trail building were out there cutting trails with their axes and chainsaws, building bridges from the trees they cut down and acquiring landowner permission to cross sections of private land. They were doing it with very limited resources, their own tools, their own money and whatever materials they could scrounge. They were doing this because they had a passion for snowmobiling, and without knowing it, they were laying the foundation for a trail system that would develop into an industry generating close to \$1 billion in economic activity for the province of Ontario in 1999-2000.

I remember trails that were single-machine width, with brush slapping the shields of our helmets as we travelled along. I remember the moguls that developed on the trails after a few weeks of snowmobiling. I also remember the guys out there pulling bedsprings behind their snow machines to groom the trails, and trips that were day-long excursions that are now quick afternoon jaunts. From this, volunteers built today's successful recreational trail system, and they are the heart and soul of the organization. They must continue to have the lead role in controlling their destiny.

Clubs recognized early that the user-pay system was crucial to having a network of great trails. What they didn't envision was the growth in popularity of snowmobiling and the demands that would be put on them by touring snowmobilers, whether from out of province or southern Ontario or by riders from the next city, town or municipality. Demands for quality groomed trails no matter what the circumstances, demands for trails to services and establishments, demands for safe, enjoyable trails, along with expectations from local businesses that now have winter business opportunities, are all placing stress on the clubs. Meeting safety issues, liability needs and environmental needs are also some of the issues that clubs are addressing.

With all the demands and the tremendous growth of snowmobiling came the reality that even with the revenues raised from the sale of permits, the clubs were short by almost half to do the job in the manner now required. Gone were the days of cutting trails without permits, gone were the days of building log bridges—now they have to be engineer-designed and contracted for building and instalment—gone were the days of homemade signage and gone were the days of no insurance. Now we are into the days of \$100,000 pieces of grooming equipment, paid operators, paid managers, consistent signage across the province, provincial liability insurance and technology, to name a few.

The revenues raised from permit sales have helped with building and operational costs, but as stated, fall short by almost 50% annually. The volunteers have covered this shortfall by donating their time and talents, using their contacts and resources and by many, many fundraising efforts.

We have met these challenges but we are getting tired. I have one club in my district that sells only 70 permits, has eight dedicated club volunteers and has, for the last

six years, done no less than eight fundraisers per year. I have another club that sells 500 permits, has a club volunteer average age of 60, and they maintain 500 kilometers of trails. The association that I'm president of in Sudbury is finding the competition for fundraising dollars extreme. Many of the clubs have had the same core volunteers for the past 10 years and they are tired. Many of them are finding the demands on their time too onerous. Each club is unique, however each club has similar problems. They suffer from too few dollars and volunteer burnout. Snowmobiling has become a year-round business, not a part-time recreational pastime. The volunteers want to build and maintain the trails; what they don't want to do is spend so much time raising the money to do it and the paperwork.

The clubs of district 12 are supportive of the OFSC's initiative in approaching the government to seek legislation for mandatory permits. We are not looking for handouts or government funding. We are looking for those people who use the trails to support the trails. The additional dollars raised if mandatory permits become a reality will help in the operational aspects of the clubs and will remove some of the burden now on the volunteers' backs.

Clubs and volunteers have established opportunities for restaurants, resorts, dealers, service stations and winter tourism. Both the provincial and federal governments have recognized the value of snowmobiling as a winter tourism attraction. They market snowmobiling in their tourism advertising although there is no provision by either the tourism establishment or the tourism department for the support or the development of the product they so vigorously market.

The provincial government, again recognizing the value of the efforts of the clubs and volunteers, partnered with the clubs of the federation in Sno-TRAC and SST 1 and 2 for funding capital projects. Many clubs used operational dollars or went into debt to meet their obligations. Again, there were no financial provisions made for the operational costs needed to operate larger and more grooming equipment or to groom longer, wider trails. With wider, longer, better trails came more riders, and with more riders came more grooming hours and more and better signage, but no financial provisions to cover the additional costs.

We, the clubs of district 12, have felt that mandatory permits under the law of the province of Ontario would help us meet our operational costs more effectively and therefore enable us to continue providing a safe, quality trail system for all riders. We would like the permit to be enforceable by the police, by the OFSC STOP officers, OFSC wardens and conservation officers. Presently an OFSC permit is mandatory on all trails where we have land use permission and is enforceable by the OFSC wardens. What we desire is that mandatory permits be extended to cover all designated OFSC trails and to have enforcement capabilities expanded to include police officers and conservation officers, and to continue letting OFSC wardens enforce the permit issue.



The user-pay system is the vehicle that enabled us to achieve the success that we have and it will maintain our success. What we are seeking now is that all contribute fairly. All who use the trails for recreational snowmobiling will share the cost of using the system. Those who do not use it won't pay.

We recognize that there are some traditional users and we do not want to hamper them from doing their jobs, maintaining their livelihood or accessing those areas that they have habitually done. We feel that exemptions can be made, however we believe that traditional users should not have the freedom to travel the system for recreational snowmobiling or beyond the limits of where their jobs take them.

On an encouraging note, I personally know trappers and fishermen in my area who buy a permit for their machines because they feel that having a groomed trail for parts of their journey has enabled them to do their activities in a quicker, safer and more efficient manner. Our clubs appreciate their support, both monetary and moral.

We have achieved a great deal in 30 years. We started out as small groups of people building local trails for our own enjoyment. Our sense of adventure and accomplishment took us to the point where we wanted to travel to the next club or town and then on to the next and the next until we collectively said, "Let's make it a provincial system," and we did. We agree and we disagree, but each club has the same ultimate goal, and that is to have the best trail system in the world.

1100

We are not asking the government to come on board to take over. We still want the job, and we want to continue to be true to our own goals and not those of another. We have proved over 30 years that we have the ability and the expertise to meet the needs and challenges of our organization. What we want from the government is, recognition for the product we have built; recognition of the product that has become a jewel for winter tourism in Ontario; and help in the form of certain tools so that we can maintain it for all who benefit from it, be they riders, businesses or government.

Volunteers and landowners across the province have established a first-class snowmobile trail system. With the government's help we can maintain it well into the future. We can continue to see snowmobile tourism grow, which in turn helps to create job opportunities, winter tourism for northern Ontario and winter recreational activity for anyone who chooses to participate.

The government has helped us to become a premiere winter tourism attraction. We now ask that you give us the tools to obtain sustainable operational funding.

In conclusion, I would like to say again that we are in favour of Bill 101 as long as the needs of the federation can be met. As stated—I didn't state it, but you understand it:

The clubs, through the OFSC, must continue to be the final authority on all matters and processes relating to mandatory permits, especially use of permit revenue;

Mandatory permits must be absolute on OFSC-designated trails and easy to enforce;

We recognize that reasonable access for traditional users and certain organizations must be met;

Trained OFSC wardens must have the authority under the MSVA to enforce mandatory trail permits.

I thank you for the opportunity to address you and look forward to trying to answer your questions.

**The Chair:** That leaves us about three minutes per caucus. This time we'll start with the government.

**Mr John O'Toole (Durham):** Thank you very much, Janet. You do raise a very complex number of concerns, in my view. I'll list them as I see them and you can just respond.

On page 4, you outline how it has become more sophisticated. Basically that's what you're saying, and that there are now standards of when you should groom and all these kinds of things. That's what happens with the world: it get more sophisticated, specifically if you let the government do it. It gets more expensive with that, too. Right now you're 50% short annually. We've heard some about the fees being inordinately high—I've heard that a number of times—and I'd like you to comment on that. I suspect that when you're looking at having an overarching organization and some jurisdictional responsibility for who will be exempted for paying, whether it's a little part of the trail or a whole district—there are a lot of questions like that.

I'm just wondering, if you leave it to government to set the rates, do you feel that the government, at the end of the day, with all their glossy brochures, should also be contributing money? Do you understand what I'm saying? Those bridges and things, and improving the trails, have just started, and once it becomes a complex, sophisticated thing, you'll have engineers here designing a more sleek way to do things and the volunteers will expect to be paid.

**Ms Depatie:** We already have the situations where the bridges—I mean, we do need engineers and they're not simple affairs any more. I did bring a few pictures and I really would like you to have a look at them, because they'll explain just a little bit about what costs can be and what volunteers do.

This bridge in particular is over 200 feet long. It's part steel Bailey bridge and part wood bridge. The wood bridge part had to be totally renovated; the decking on the steel bridge had to be totally redone. We obtained prices of \$70,000 and up to do this bridge. With highly committed volunteer efforts over a period of 13 weeks, scrounging materials that were approved and being out there and doing the work, we managed to do it for \$17,000.

**Mr O'Toole:** Excellent. If you had let the government do it, it would have been \$100,000. I'm serious. That's my feeling. They would have two engineers and one inspector.

**Ms Depatie:** I feel that way, but I'm only speaking for myself on that point.

So we have done that.



**Mr O'Toole:** How do you feel about volunteers getting paid? Won't that be the expectation? Say my fees in 10 years were \$200. I'd say, "Gee, I'm paying the way." I remember when I was a volunteer at a ski club. Originally it was \$200 a year, then it was \$400, then it was \$600 and we were expected to do trail work. Now it's \$800 and I wouldn't lift a broom. I'm paying.

**Ms Depatie:** I'm the president of an association that has eight clubs. The association has two paid people. We pay an administrator who takes care of the office and grants and all of the paperwork; we have a person who takes care of the operational end. We employ 20 to 35 paid operators, depending on the season. But in saying that, we still have an excellent core of volunteers who love to do—there's part of it that they really love to do. They love to be out in the woods; they love to do the trail work. They love that part of it. Spending eight hours in your house doing paperwork—we recognize that there's a place for paid people and a place for volunteers.

**Mr O'Toole:** Good. Thanks very much.

**Mr Ramsay:** Thank you, Janet, for your presentation.

I guess in all this, it's finding a balance. I think Mr O'Toole was getting there. You mentioned that there's about a 50% shortfall in revenue to make this happen, but at the moment what keeps it going are the volunteers. It's the sweat equity and the donations of materials and everything, as you said, that do this. So somehow we have to keep striking a balance between the revenue coming in from permits to keep it affordable and yet not destroy, as Mr O'Toole alluded to, the volunteer system so that the local people still have a stake in it and feel that it's theirs. That's the balance. While you look to the government to regulate this a little bit, we're going to have to be careful that we don't overdo it—

**Ms Depatie:** Yes, I would agree.

**Mr Ramsay:** —and in a sense take it from you, because then, as Mr O'Toole said, it's going to be a government thing and that's it, and in a sense people won't have respect for it any more. They'll lack the ownership.

**Ms Depatie:** And the volunteers probably wouldn't be there.

**Mr Ramsay:** Therefore, yes, they won't volunteer. That's why I think it's important that the association keep control of the permit fee and the collection of it, too, and not the MTO. I think it's important to keep it in your hands, so that basically you carry out the legislation but it remains at the grassroots level and any changes should only happen in consultation with the federation. The federation has consultation through all the member clubs, so it is democratic and grassroots. I guess that's our challenge, to find that balance, so we don't destroy something that has bloomed over the years and has basically created a tremendous attraction for this province, for its own people and for tourists.

**Ms Depatie:** I appreciate your comment, sir. That's how we feel.

**Mr Ramsay:** Yes, I think we have to reflect that. So I have some concerns about this, because it's starting to

look a little bureaucratic. I'm a little concerned that the government would say in this legislation, "We recognize some of these concerns, but we'll take care of it through regulation," and we don't have control of that. Once this is passed, then we've given approval for basically the bureaucracy through cabinet just to approve any changes without them ever having been publicly debated any longer. I think we have to make sure we've got safeguards in there to protect the rights of the members in the clubs.

**Ms Depatie:** Yes, we're quite concerned about that.

**Mr Ramsay:** So we're going to try to introduce those amendments in the next few weeks and we'll certainly be looking to people such as yourselves for that advice.

**Mr Spina:** Mr Chair, I just wanted to, if I may, with David's consent, thank Janet for the information she provided, because I think it's really good. We appreciate that, Janet.

**Ms Depatie:** Thank you. I would like these back, but I could pick them up at lunchtime.

**Mr Ramsay:** Can we pass them around?

**Ms Depatie:** Yes. It's one folder. It has a few pictures; I think you might enjoy them.

**The Chair:** Thank you very much for your presentation. We appreciate it and the resources you've brought for our consideration.

Our next presentation is by the Polar Bear Riders Snowmobile Club.

**Interjection:** They haven't arrived yet. I wondered if we could delay.

**The Chair:** We certainly could, particularly if either of the next two presenters is here, Mr James Gibb or Save Our North. The clerk is just going to check. Apparently the representative of Save Our North indicated he was on his way from Falconbridge Mines, and that's not too far. Perhaps we'll take a five-minute recess to pass around these photographs and wait for the arrival of the next group.

*The committee recessed from 1110 to 1122.*

#### POLAR BEAR RIDERS SNOWMOBILE CLUB

**The Chair:** So much for my great strategy to finish on time here.

I'm told that our next presenters are here. That is the Polar Bear Riders Snowmobile Club. I invite them to come forward to the witness table. Good morning and welcome to the committee.

**Mr Rheal Cousineau:** Sorry we're late.

**The Chair:** That's OK.

**Mr Ramsay:** It's not that far.

**Mr Cousineau:** No, it's my fault. I didn't get out from the other job in time, so that's the only problem.

**The Chair:** We realize you have come a very long way and appreciate your taking the time.

**Mr Jean-Pierre Ouellette:** Good morning. I would like to begin by thanking the members of the standing committee for this opportunity to speak to you about



Bill 101 and the importance it brings to our local circumstances. We are extremely grateful for the consideration the province has accorded to our passion and industry called snowmobiling. I mean this deeply, in terms of the significance and the importance that the province has brought to this entire process.

My name is J.P. Ouellette and I am here to represent the Cochrane Polar Bear Riders Snowmobile Club, home of the world's number one trails. With me is Rheal Cousineau, deputy mayor for the town of Cochrane and also the former reeve of the township of Glackmeyer, which actually was the municipality responsible for starting it all in our neck of the woods. As well, in attendance is Denis Michaud, who is the current president for the Polar Bear Riders. Thanks, Denis.

Today we wish to highlight to you the concerns and opportunities this bill provides. I know, for some of you who are snowmobilers, and the rest of you have heard this for the past few days, that clubs have been facing various dilemmas in the last few years. You have heard evidence from volunteers who have become victims of their own success. You have heard that this success did not come by accident, but from the hard work of people who had a passion for snowmobiling and a vision that some day we could ride to all the northern communities and even to all the adjoining provinces. I'm happy to say we've been there and done that.

Cochrane, having a population of about 6,000, started only about 10 years ago with a new snowmobile club. We've since grown to just under 900 permits, representing about 2,000 family members, and maintain over 700 kilometres of snowmobile trails. The PBR club, as we affectionately know it, operates a significant hub of five TOP trails, or trans-Ontario provincial trails. One of our most popular trails is the Quebec link, being about 170 kilometres with only one service stop on the way. This trail alone takes a volunteer 14 hours to groom one way, and then he must turn around and complete his trek back home by groomer. That's dedication. This is what we're about. We groom on average 20 weeks per year, and an additional 12 weeks is needed for building ice bridges, brushing and doing the work that's required to open and close trails before and after the season.

Snowmobiling has changed our community significantly, representing our highest growth industry in the past decade. Motels and resorts have started or expanded and fuel and service dealerships have redeveloped their entire business and marketing. Cochrane has taken full advantage of these opportunities that snowmobiling presented and has since become a premier snowmobiling destination, hence our proud slogan, "World's #1 Trails." We even have igloos at the North Adventure Inn that are fully serviced rooms and that snowmobilers have been booking a year in advance, the point being that our entire club infrastructure and community economy has been changed by snowmobiling and geared to meet this wonderful winter opportunity. Bill 101 has the potential to catalyze our momentum if implemented with the same

vision, or could destroy us should the established revenue stream be unfavourably altered.

First I need to tell you a story, a bit of an example. Four years ago our club was provided a grant, and we needed matching dollars to expand our trail system. PBR had no money, and we just couldn't pass up the opportunity. A champion surfaced and raised \$25,000 within 48 hours to meet the club's funding portion. So all this money was raised between the business community and local people with a vested interest in the whole infrastructure. Cochrane and business community leaders believed in our tourism product and continue to this day to provide tremendous support through our annual corporate funding and marketing program.

Because of our extensive grooming season, the club could not provide 700 kilometres of trail on its membership base alone. We're certainly overextended in terms of what we can maintain, but over the years the OFSC has provided our club and other northern clubs with a provincial funding formula that funnels more permit dollars to areas where it's needed. This complex matrix benefits our provincial trail network greatly by being able to provide more trails in the northern parts of the province where there is naturally, pardon the pun, more snow.

The province needs to realize one thing relative to its effort in assisting club volunteers in the snowmobiling industry: helping too much is a bad thing. While this statement is oversimplified, should the province, under any ministry, decide for, or take responsibility away from, snowmobilers for things like the permit price, the revenue collection and distribution, or the management or operation of trails, the result would be the following: the volunteers, like myself and some of the people in this room, would be completely happy just to ride the trails; to stay at home and not toil over the trails and not have to worry about them. That would be an unfortunate demise. Our corporate funding partners as well would disappear, as they would see the organization of snowmobiling become the mandate of government, and why should they pay for a provincial highway? That's another eventuality. All of this would lead to a regressive attitude toward supporting trails and a feeling that the volunteers have lost ownership and responsibility for the trails they constructed and created. Finally, the result is the complete and eventual withdrawal of support, where trails will start to fold. I don't think the government wants to create a ministry of snowmobiling to coordinate and staff operations for the maintenance of trails.

#### 1130

In order to achieve continued success, the province must examine how and why the system has worked so well, heed the advice of the volunteers and the clubs and develop a program that is in the same vein and proven effective. That is why too much help is a bad thing.

The other issue of significant concern in northern Ontario is, who must pay for the mandatory permit? In my experience in dealing with this particular issue and individual snowmobilers during and after a new trail development process, I would suggest, firstly, that



everyone who registers a snowmobile pay for a mandatory permit.

An example I'm referring to is mimicked under the Ontario farmers' association program for farmers to get a business number for the rebate on provincial taxes. They have to register. They have to become a member of the OFA or a similar organization, I think it's Christian Farmers, a similar type of scheme with the province, except the following, who may apply to receive a refund based on established criteria to be enacted under regulations:

For instance, a trapper will be exempt, limited to the snowmobile trails which are found within his or her legitimate trapline, but will be charged if travelling elsewhere. We have some trappers who ride Mach 1s and Mach Zs, the big machines, and don't necessarily just limit their snowmobiling to their trapping experience.

A traditional user who limits their riding to areas they have traditionally occupied, such as a cottage or a camp, where a trail existed and was taken over by the club but wasn't upgraded with bridges or with brushing—we have a few cases where there is a multitude of forest access roads, and clubs have taken them over and groomed them. In our experience, we've provided them the opportunity to continue using that section of the trail to access their cottages. But if we find them on a section of trail that the club has improved with a bridge or brushing or the trail didn't exist before, that's where we would take offence.

The other comment to this is that, in my opinion, an occupier should not include a fisherman who has always fished at a particular lake. So we look at "an occupier" as a definition to limit a traditional user.

Another example for a mandatory permit is a non-resident of Ontario having purchased and affixed a valid temporary or tourist permit. In other words, we'd like to see that program continued. They wouldn't be buying, for instance, possibly, the year's pass to come and enjoy our trails in Ontario, but would definitely have an option to take a temporary or tourist permit.

As well, a landowner—for instance, a farmer—limited to riding on his own property of course would not be subject to a mandatory permit, or it could be refunded if they purchased one through the system. This is not to be confused with a farmer riding along a trail located on a municipal unopened road allowance that is abutting his property. We've seen those in instances as well. I'll refer to it later on.

The limited information provided in Bill 101 is a serious impediment to a complete analysis. The regulations, which the province will have the sole authority to pass, are the scary part. All regulations, before their adoption, must be vetted and adopted by snowmobile clubs. The devil in this entire exercise will be in the details. You must devise a process which is based on the input from snowmobilers.

An excellent example of this process, as you are aware, Mr Gilchrist, is the legislative committee of AMCTO, also known as the municipal clerks and treasur-

ers' association, where a group of municipal officials will comment on any new draft legislation before it is presented to the Legislature. This process provides for an effective review by vested interests.

In addition, this committee needs to ensure that the province enacts legislation within the Municipal Act to ensure that municipalities have the authority to give clubs the exclusive snowmobiling use of unopened road allowances. It's taken up a lot of court time and a lot of expense on behalf of clubs and individuals regarding this issue, and we would need to have that situation addressed.

On this note, I would like to conclude by thanking all of you for your genuine interest in improving our product called snowmobiling. Your initiative will have a profound effect on northern Ontario. And a very special acknowledgment to the honourable Joe Spina, MPP, Brampton North, for your superhuman feat of championing this needed project.

With this, I will turn the discussion over to my boss, Rheel Cousineau, who is deputy mayor for the town of Cochrane. He'll say a few words, and if we have time, we'll be open to questions.

**Mr Cousineau:** First of all, I'd like to refer to David Ramsay's comment that I will only be given about half an hour to speak. I won't take the half-hour on that one, David. Last time, that's what happened.

I think it's pretty clear from what Jean-Pierre has presented to this group here today that we've come a long way as far as snowmobiling, from cutting these little trails on a Saturday morning, half-frozen, with the dream or the goal that at the other end of this trail would be other trails in the coming years. Then we'd wind up with something that's almost like a Trans-Canada Highway across this country, where you can use snowmobiles.

Now we're looking at a billion-dollar business and, for northern Ontario, a very important one at that. As my role on the Cochrane and Area Development Corp, I know that we needed snowmobiling badly to supplement our logging operations, our declining farming operations and, to some extent, other industries that were leaving. So snowmobiling has become very important. Again, I think we can't be not serious about the endeavour here. We need to put in place some help for Ski-Doo clubs, some funding that we can count on, but as Jean-Pierre mentioned, not so much funding that we become more interested in our La-Z-Boy chairs than we are in cutting trails and developing.

There was a challenge out there for our volunteers right from the beginning: can we cut another trail? Can we enlarge our operation? Can we provide more for our tourists? That has got to be pursued. We can't stop where we are right now. It's very nice, we have 700 kilometres—and Denis will tell you that's plenty to maintain—but I guess with proper funding, there's much more we can do. But I think we need to be able to do it effectively and not leave any stones unturned as we try to develop this.



There have been problems, needless to say. In our community, when I was the reeve, we had problems with farmers who did not accept the fact that they couldn't use the trail free of charge because it was bordering their land or on their land. I remember many nights when we had people showing up and wanting to put the D-8 in the whole enterprise; not to help us, by the way, with the D-8 but to maybe shut her down.

We've gone through all of this. The people who were opposing this now find their sons and daughters involved in tourism, involved in repairing these machines, involved in gas stations as part-time jobs. It's become a whole industry. I think we should do whatever is necessary to keep it going, but not to the point where we think we've got another Ministry of Transportation or MTO taking care of our trails, or that we have another ministry that's going to do all the work for us, because people like to get involved. People are proud of what we have developed in all the area as far as infrastructure.

Based on that, I think we must strive and always tinker with the system, like we did in our municipality when we first developed the first trail. We had visions of a snow-rama that wasn't going through virgin bush, destroying sleds and scratching sleds and making it pretty unsafe for the riders. If we cut the first trail around these empty road allowances, people would come in and do the snow-rama and eventually say, "Gee, I'm getting tired of going around this loop," and then we would develop some other stuff.

As a result of all this, we see now that we've got 700 kilometres. We're going into Quebec. It's become an interprovincial type of affair, which is good for this country. I'm sure that in the Thunder Bay area, they're probably going into Manitoba quite frequently. It's good for our country to keep doing this, and it's another industry that's a big one. That's about all I have to say at this time.

**The Chair:** Thank you both. You have timed it perfectly. You've taken your 20 minutes. I want to say again, we appreciate your taking the time to come before us today. Thank you very much for your views.

**Mr Spina:** Can I say, I'm just a little guy from Sault Ste Marie, I'm not superhuman, but thanks, Jean-Pierre.

1140

#### JAMES GIBB

**The Chair:** Our next presenter will be Mr James Gibb. Good morning. Welcome to the committee.

**Mr James Gibb:** Good morning, ladies and gentlemen of the committee. I welcome this opportunity to speak to you for a few minutes. Basically, I have laid before you a map of my trapline. The little red dots all over the map are the beaver houses I travel to, and the green thing is the actual federation trail that runs through the middle of my trapline.

I wish to express my concern as a professional fur harvester in regard to the impact of Bill 101 on trapping. The act, as I've read it, does not exempt other resource

users of crown land from paying for recreational trail use. As a trapper with a registered trapline, I am licensed by the province of Ontario for this activity and pay both a licence fee and a royalty fee of 5.5% on the gross value of all my trapping activities.

One of the responsibilities I have as a registered trapper is harvesting my assigned beaver quota. In Ontario, we have assigned beaver quotas and we have to harvest 75% of them on an annual basis. For example, a 100-beaver quota would translate into a minimum harvest of 75 beaver every year.

This harvesting activity has me travelling many miles via snow machine within my registered trapline. On this trapline, CP-20, the line is split down the middle by an Ontario Federation of Snowmobile Clubs trail. This trail has only been in existence for a few years, while the trapline it travels through has been in existence for more than 50 years.

At any given time, I use three different types of snow machine in aid of my fur harvesting activity. I have one machine for everyday work in average conditions, I have another machine that I use for breaking trails in extreme conditions, such as after large snowstorms, and finally, I have a snow machine that I use for late-season conditions, when we have a hard crust to travel on. As Bill 101 is written, I would have to purchase three trail permits to work my trapline. The snow machines I use are all work machines with specific purposes. If I did not trap, I would have no reason to own a snow machine, and as an activity recreational snowmobiling is not an option for me.

The Ontario Federation of Snowmobile Clubs' trail was constructed using existing access roads and rights of way. It primarily follows the Highway 101 west corridor from Foleyet to Timmins. Most of the route has been in existence for many years. Why should other resource users have to pay for a recreational trail?

I would be just as happy if the trail did not pass through my trapline. Knowing this is public land belonging to the people of Ontario, I support co-operative and shared use of crown land. But the recreational snowmobiler does not pay for my fur harvesting activities while crossing through my trapline. Consequently, I do not expect to pay for his activity while I work my trapline just because a federation trail now passes through.

Because this trail system is on crown land, it will cause problems when beaver decide to plug up a culvert or flood part of the trail system. When this happens, and it will, the beaver will be looked at as a nuisance and the federation will want them removed. As sure as I sit here in front of you, I know this will happen. This will put both groups, the recreational snowmobiler and the fur harvester, in a conflict position. By allowing an exemption for the trapper in Bill 101, both parties will benefit from normal harvesting activities.

In closing, I wish to say that I fully support Bill 101 with a clear exemption for fur harvesters written right into the act. I believe anyone riding the trail system for recreational activities should pay for that privilege.



**The Chair:** We have a couple of minutes for questions. This time we'll start with the Liberals.

**Mr Ramsay:** Thanks very much for your presentation, James. I agree with you totally. While this bill has some kind of loose language near the end of it that says exemptions and different classes of users can be established through regulation, I think you're right. When it comes to fur harvesters especially, we have to have it right in the act that you are recognized as a traditional user and that you have to have free access to traditional traplines as long as you're a fur harvester. That has to be there.

What concerns me—and the government will say, “We’ve got the flexibility in the act to take care of your situation”—is that while I’m sure Mr Spina has great influence with the minister and probably this time around we might even get enough regulation that would make you happy right now, it would be easy come, easy go, and that’s the problem. Somewhere down the road, a change of minister or a change of government, whatever, people start complaining, and that regulation could be taken away very quickly without any debate like we’re having here today and no debate among legislators.

I think you're right: It has to be in the act. We're really starting to change how we regulate snowmobiling here, and the users have asked the government to come into this. We have to make sure that users such as yourself are protected. I agree with that. Our critic, Mike Brown, will be moving such an amendment to try to get this into act, because it has to be there. I appreciate your input, and I hope the government members hearing harvester after harvester will get the message too and accept those amendments.

**Mr Gibb:** You scare the hell out of me when you say “regulation.” The correlation I’ll use is the spring bear hunt. That was a regulation, which is easily changed by public influence.

**Mr Ramsay:** That’s exactly right. That’s why we need it right in the legislation. Yours is a traditional activity that was there long before snowmobiling ever happened. It should be in this act and recognized so it’s basically ensconced in the legislation, it’s there and it would take an act of Parliament to remove it, rather than just through regulation. The spring bear hunt is a very good example.

**The Chair:** Mr Spina, very quickly.

**Mr Spina:** Thank you very much for a clear, concise and to-the-point presentation. I won’t go through the item I talked about earlier; I think you heard it when I read it out earlier today. Right now, the trappers currently enjoy an exemption in agreement with their local snowmobile club through the federation. We have no intention of changing that. I would personally oppose any changes to those exemptions as they stand. That’s all I can tell you right now. I’m not sure regulations are changed that quickly, but—

**Mr Ramsay:** The spring bear hunt is a good example.

**Mr Spina:** Maybe it is. I don’t know that that was a regulatory issue as much as it was a policy issue under

the ministry, but I stand to be corrected. I wasn’t that close to that particular issue. To me, if we outline in the bill that classes of persons are identified as exempted, then in the regulation you can actually name the class of person.

**Mr Gibb:** I would definitely like to see it written right within the bill. With a change of government and changing viewpoints in society, it makes it difficult to chase a regulation sometimes.

**Mr Spina:** OK.

**Mr O’Toole:** Just a quick comment, Mr Gibb.

**The Chair:** Mr O’Toole, very quickly.

**Mr O’Toole:** You mentioned you had three snowmobiles. I’ve heard other presentations that suggested they license the operator or give them the permit as opposed to the machine. What’s your view on that?

Are you currently a member of the snowmobile club?

**Mr Gibb:** No, I’m not. I use my machines strictly for working. I have three different models to do the different—if you look at the map, you can see that I have to kind of get all over the place in there in different conditions.

**Mr O’Toole:** Sure.

**Mr Gibb:** There are no roads in a lot of these areas. I have to be able to pass pretty efficiently time-wise in order to get this accomplished every year, so I use three different machines to do that.

**Mr O’Toole:** Very good. Thanks.

**The Chair:** Thank you very much, Mr Gibb. We appreciate your bringing a copy of your map. I think it’s the first time anyone has given us an opportunity to see the relationship between snowmobile use and trapping use and, quite frankly, the extent of your trapline. It’s very impressive. It adds a lot to our consideration.

**Mr Gibb:** Thank you very much.

## SAVE OUR NORTH

**The Chair:** Our next presentation will be from Save Our North. Welcome to the committee.

**Mr Scott McLean:** Good morning. Thanks to everyone for coming to Timmins and thanks for the opportunity to meet with you and express maybe a bit of a different perspective on Bill 101.

Just a few introductory remarks. We all recognize—and I’m not here beating my chest—the value of nice snowmobile trails for recreation. They add to the lifestyle quality for local residents and also provide a means for tourism and an injection of external funds into local communities.

Industry has always supported the snowmobile clubs and tried to work with them. We’ve allowed them to cross industry lands, use industry-constructed access routes in order to construct their trails. By and large, we’ve tried to co-operate with them and not disturb their trails during the time we’re very active in the woods, in the wilderness, with heavy machinery.

I’ve prepared a statement for you. It gives you a little bit of an outline of what Save Our North is and what



some of our concerns might be around Bill 101. I'm just going to go through that with you and you can read along as you like, and then I'll have a couple of closing remarks.

1150

Save Our North was formed back in 1991. It's a consolidated lobby group to save resource-based jobs in northern Ontario. It was put together at a time when the NDP government was in power. The economy wasn't doing so well up here and the government was trying to implement a process of alienating lands from resource industries through the creation of parks under a campaign called Keep it Wild.

Resource industries, particularly the exploration sector of the mining industry, have consistently been attacked by various government policies that restrict, encumber and often completely alienate us from accessing land. As explorers, we need access to a huge land base in order to make small, significant discoveries. Good examples include the creation of large, single-purpose provincial parks, like Lake Superior Provincial Park over prospective geology, and the Lands for Life and Living Legacy process.

It's important, as new industries such as recreation and tourism continue to establish themselves in the north, which we like to see, that we don't lose sight of why the northern communities are here and what's going to sustain them over the long haul. It's going to be the actual resources that we all can benefit from up here.

The end result of exploration is mining, and mining contributes substantially to the social and economic welfare of communities. For example, mining, predominantly from northern Ontario, contributes about \$6 billion to the Ontario economy annually, and has contributed about \$150 billion over the last century. Mining creates about 25,000 direct mining jobs and about 84,000 spin-off jobs. The average direct mining job has a wage of greater than \$60,000 a year. That's fairly significant in these parts.

From a community perspective, mining has often been the backbone of the economy. Here in Timmins, for example, in 1997 Kidd Creek injected somewhere between \$250 million and \$350 million into the local economy, which included \$106 million in payroll and about \$8 million in municipal taxes.

The reason I go through this preamble is to ensure that you can see that a healthy mining industry in northern Ontario is vital to all who live and prosper here, and who choose to buy Ski-Doos. Unfortunately, our ore reserves are in serious decline in Ontario. This is due mostly to government policies like Lands for Life, Living Legacy, whatever you want to call it, that continue to reduce the land available for exploration, restrict access to the wilderness and establish a general uncertainty for companies and individuals who would otherwise invest in Ontario.

Save Our North's concern in regard to Bill 101 is that once again restrictions are being placed on the industry, and particularly the individual prospectors and contractors in accessing their ground to complete exploration.

Individuals will now be forced to purchase a permit to use existing snowmobile trails, with no guarantee that the cost of the permit will not increase from year to year. Many of these trails are traditional access trails that we've used for years to access areas and often, in many cases, they provide the only access into local areas. In effect, a prospector's licence in Ontario will soon allow the individual the right to stake and explore his property but not the right to access it without creating his own redundant trail system. We don't choose to groom the trails; the snowmobile clubs do. We don't need them groomed. We can operate without them being groomed.

I ask the panel today to recognize the indispensable activity of mineral exploration and particularly the necessity of the individual prospector and his need to access his land in order to sustain a robust economy in northern Ontario. Don't encumber our chances of a discovery by levying another fee and creating more uncertainty for our ability to explore and discover. A prospector's licence must also allow the individual to gain reasonable access to his property.

In closing, I would like to say that I was kind of encouraged by the statements of Mr Spina and Mr Ramsay regarding the fur trader. The fur trader has traditionally been able to access his land. A prospector is as nostalgic and as traditional an occupation up here, and absolutely more than anything it requires our ability to access our properties in order to explore. I'd like to see that there be something in the act that addresses that, much along the same way that we spoke about addressing that for the fur traders.

That's about all I have to say right now. I think it is well described in the notes. I can answer any questions, if you have any.

**The Chair:** Thank you very much. We've got a few minutes for questions. We'll start with the government.

**Mr Spina:** Thanks, Scott. I appreciate your presentation. We haven't had very many from the mining industry. As a former parliamentary assistant to the Minister of Northern Development and Mines, I was quite involved. We may have met somewhere along the route.

**Mr McLean:** Yes, a few times.

**Mr Spina:** Anyway, I just want to assure you that we do recognize the continued health that the mining industry must have and the opportunity for prospectors. I can assure you that I would never support something that would encumber the prospectors in an additional fee, particularly with regard to the snowmobile permitting structure, if it proceeds in the way that is proposed at this point. There is no question that I think the prospectors are certainly as equal in terms of their access to crown land as the trappers are. So, thanks.

**Mr McLean:** It's very encouraging to hear. We're willing to work with the snowmobile clubs. As I said in my opening remarks, we recognize the benefit of these trails, but not at the expense of not being able to access our ground.

**Mr O'Toole:** Just one quick question and a point. What's the best time of year for prospecting? Do you do



a lot of prospecting in the winter? I don't know anything about it.

**Mr McLean:** It depends on how you describe prospecting. Generally the mineral exploration activity is throughout the year, and traditionally it has been throughout the year. In the wintertime, prospectors have often been able to access remote areas and travel across lakes in order to stake claims and work properties. Today, the wintertime, particularly in this swamp-ridden area, is the time when we do a lot of diamond drilling and geophysics over wet, inaccessible areas. Summertime has been more of a time when we do more traditional type prospecting, hammering on rocks, mapping the outcroppings that may occur. But certainly the winter allows us much easier access into areas by creating trails and being able to pull heavy equipment into the field.

**Mr O'Toole:** Thank you for your presentation, and I'll tell you why. Even in the consultations under Lands for Life for multi-use, we're always trying to find the balance of land use and land protection. We heard that in a couple of presentations today. I appreciate your coming forward.

**Mrs Bountrogianni:** Thank you for your presentation, particularly for your numbers and the billions that your industry adds to the economy of Ontario.

This is pretty well a constant theme, that this is basically the part of the bill that traditional users of trails are against. Is there any other part of the bill that you have concerns over, or is it just basically the permit?

**Mr McLean:** That's the cornerstone, for sure, and I tried to express that. We need access to as much land as possible, and the ability to get there, in order to continue with our vital industry in Ontario.

There didn't seem to be in there, through my read of it, anyway, any sort of cap on what that permitting price would be, if you did go ahead with this bill. Right now I think it's in the area of around 150 bucks for a year. I don't think there were any constraints on that being pushed up as high as need be in order to maintain the trails. That was another point of contention.

Besides that, the other parts, as far as law enforcement and trying to get away from the police and so on, that's all fairly logical in my mind.

**Mr Ramsay:** Thank you very much for your presentation, Mr McLean. I agree with you totally, and I want to assure you that we will move in our amendment to include prospecting as a traditional activity that needs to have an exemption. I think what we need to figure out is how that will be determined as to who has the right. I think it's probably easier with trappers, who have a traditional history, but obviously if you have a claim, then you've got a history. We obviously wouldn't want to preclude new prospectors because that's, as you know, a renewable industry in the north so we want to encourage future generations to do this also. It's the activity we'd want to protect, not just the individual. We'll have to come up with language that protects the activity so that people can prospect and use the trails.

**Mr McLean:** I think the local associations and the OPA are willing to work toward that with you. It could be something as simple as holding a prospector's licence and demonstrating your need to use the trail provides you with a class of permit or something along that line. There's lots of creativity that can be spawned from this in discussions, I'm sure.

**Mr Ramsay:** That's a good idea. The reason I want it there was the example the previous presenter mentioned of the spring bear hunt. While Mr Spina said that was a policy matter—that's correct, the government changed its policy—for many of us it was how the government changed the policy: without having the debate. There was a pronouncement by the government that—

**Mr McLean:** Exactly.

**Mr Ramsay:** —“We have changed this regulation and this is how it is going to be. Thou shall not shoot bear in the spring any more.” That's why you've got to have this legislation. Times change and interests change, and if there are to be changes to this, we should at least have the public discussion. That's what you should have in a democracy. If we need to change this 10 years down the road, we should do that, but not have it done behind a closed door and then have an announcement. That's why I want it in here, because right now, while there seems to be some goodwill expressed by Mr Spina toward certain industries, this could all change at any time. We've seen that with this government, so we've got to get it in here.

**Mr McLean:** Absolutely.

**Mr Spina:** Will the Liberals reintroduce the spring bear hunt?

**Mr Ramsay:** I support the spring bear hunt.

**Mr McLean:** Are you contending that the Liberals will be in power some day?

**Mr Ramsay:** I think that's—

**Mr Dunlop:** Does your party support it?

**The Chair:** Now, now, folks.

Mr McLean, thank you very much for taking the time to bring your industry's perspective to these hearings this morning. We appreciate very much your comments.

**Mr McLean:** Thanks very much. Have a nice day and a nice weekend.

**The Chair:** With that, committee will stand recessed until 1:30.

*The committee recessed from 1202 to 1331.*

**The Chair:** Good afternoon. I'll call the committee back to order for the next seven deputations on Bill 101.

**Mr Spina:** On a point of order, Mr Chair: I don't see any Liberal members here. Can we proceed?

**The Chair:** We certainly can. Everyone knew the starting time and I have indulged them five full minutes. So while it is of course preferred that we have representatives from all the parties, we must show more respect for the people who have taken the time to come before us here today.



## PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

**The Chair:** Our first presentation is the Porcupine Prospectors and Developers Association. You're welcome to come forward to the witness table. Good afternoon and welcome to the committee.

**Mr Robert Calhoun:** Good afternoon, Mr Chairman and members of the committee and interested public. Probably the Liberal members aren't here because they've heard me speak before and they say, "Oh no, not him again."

You have in front of you a letter that I've written to the minister, and basically what I'm going to do this afternoon is just expand a little bit on that letter, give you a little more detail. The membership of the Porcupine Prospectors and Developers Association is about 136 members. We conduct exploration activities in and around the Timmins area and beyond. The problem that we have with the OFSC trails are that sometimes they are more of a hindrance to us than they are a help. They will become more so with this bill.

There are many cases where access to where we'd normally do our exploration has been taken over, for lack of a better word, by these Ski-Doo trails along forest access roads, winter roads that sometimes have been put in by exploration companies. If the trail is there, it becomes a hindrance to us and a safety issue if we are trying to cross or go along that trail where we normally would have gone because, number one, in a lot of cases we use heavy equipment and, as everyone knows, the speed of snowmobiles on some of those trails is sometimes quite fast. If they come around the corner and there's a D-6 tractor coming at them with a 12-foot blade, somebody's going to get hurt, and it's not going to be the bulldozer. That means we have to have someone in front of our machine, which requires us to have another person involved in the operation for the safety factor.

There have been cases—myself personally—where there were two access roads into an area; one, the Ski-Doo trail had taken over. The second one was a little farther for me to go, but to avoid the possibility of having a battle getting down the trail, I took the second route, which worked for me because it was wintertime. If it had been summer I couldn't have done it, but the snowmobiles wouldn't have been there anyway. There are many cases where these trails are in our way. We have been inundated with restrictions to access the land over the last few years with Ontario's Living Legacy.

I'm not going to get into a numbers game. You had a presentation this morning from Save Our North where they gave you all kinds of numbers and statistics. You can make statistics go whichever way you want them to go: they can work for me or they can work against me. What we would like the snowmobile clubs to realize is that they are the new people in the woods, as far as these trails go, and they have to respect the fact that we have been out there doing our thing for a number of years. The trappers have been doing theirs even longer than we

have, and we would like to see some exemptions for traditional users, explorationists, prospectors and trappers. We would like these people to be able to access short portions. We're not going to be out there riding the trail from here to Cochrane. We'll drive to Cochrane and use a short piece up there if we have to. It would be quite obvious to anyone who rides snowmobiles that I and my assistant, with two long-track Tundras with a maximum speed of 35 miles an hour, are not out riding the trails for pleasure. We're out there because we have to be.

In addition, the \$150 permit for prospectors, trappers and exploration contractors, and even for myself—I have three snow machines which I may use at one particular time, all of them or one of them. This would require me to have a permit for each of those snow machines, so now I'm at \$450 to ride on the trails and to use the trails. Some survey contractors have up to six or seven snowmobiles, so now you're getting up into \$600, \$900, \$1,000 for them to do it. With the state of the mineral industry right at this particular time, and especially the exploration industry, we can't afford to have any more pressures put on us to find different ways or better ways into areas to increase our costs to get into an area and also to increase our costs by requiring these permits on all of our snow machines.

We are one of the few groups out there that are multiple-use proponents. We would like everyone to have the same opportunity. We all realize that using crown land is a privilege, not a right, and we have to respect the laws that are in place at the time. But we would also like some consideration for the people who have been using the forests and some of these forest access roads and other trails for more years than the Ski-Doo trails have been there.

That basically is my presentation. I'll answer any questions that anybody happens to have.

**The Chair:** Thank you for your presentation. The questioning this round will start off with the Liberals.

**Mr Ramsay:** Thank you very much for your presentation. I'm sorry I missed the beginning of it. As I said previously, this morning, our party will put in an amendment to exempt traditional users such as prospectors and trappers from the permit fee. What sort of criteria would be helpful identify the legitimate prospector? Would it be holding a licence? We'll need to put something in there so we properly identify who would be authorized so there's no abuse to it. How would you do it?

**Mr Calhoun:** Like you say, there are prospecting licences which we have to have to conduct our business in the woods. The individual person could go to the local club and state their case. If the person has claims in the area and they're going to work them in the wintertime, that's known to those people and it's known to the government. We have to spend \$400 per claim unit per year, so the government knows when and where we have to spend our money.

There's always going to be someone who's trying to beat the system, I realize that, but our organization and other organizations in the area could help the Ski-Doo



clubs identify the people we consider to be the legitimate users and the legitimate prospectors and so forth, from our end anyway.

**Mr Ramsay:** I like your approach because that's to me, if this is to work, the approach we have to have, to have this at the local level rather than just have some regulation that comes after the act. I think we need something in the act that in a sense would ensure that local users who have a relationship now with the local clubs get that exemption and that it's done at the local level, with the recognition that the person has claims in the local area and needs to use that trail. If you get it bureaucratically and you've got to apply through Toronto or something, it's going to get too convoluted. It has to be simple and done locally. So I'd be looking for language in the legislation that would have it done at the local level, because I think people so far have worked pretty well together.

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**Mr Calhoun:** Yes, we've been getting along for the last few years, so we don't need something that you have to have written into this bill.

**Mr Ramsay:** Yes, I agree.

**Mr Dunlop:** Thanks for your presentation today. I just wanted to read a portion of one of the amendments and see how you feel about this at this time.

Section 9 of the bill amends section 28 of the act. Regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or regulations. Regulations may also be made general or particular and different classes of persons may be identified for exemptions for the act or regulations. That's the amendment we're prepared to make.

**Mr Spina:** That's already in.

**Mr Dunlop:** It's already in there.

**Mr Calhoun:** Yes, that one is in there, but the problem with the different classes of snowmobiles—I use Long Track Tundras. Not everyone does. Some of the guys use ones that would be trail type snow machines because they want to get there quicker than I do. But I don't think the wording of that one is strong enough. The actual name of the persons they wish to exempt would be a better way to do it: prospectors, explorationists, trappers. I don't know who else would be looking for an exemption, but I think the actual names of the people, not just a class of person, may be exempt.

**Mr Dunlop:** Is there any time that you would use one of the trails, as a prospector, and do damage to the trail itself?

**Mr Calhoun:** There are times when, like I said in here, they use forest access roads that are public-use roads in the summertime. They aren't necessarily plowed unless the forestry company is going to use them in the wintertime. So quite often we will plow those roads to get into an area, and obviously if we plow that road it's going to change the status of the trail. Usually, we don't take it down to gravel because we want to use our own machines on it, but it would be different than the trail that

the guy had just come off, where it was nicely packed and groomed and so forth. But in most cases you are looking at three, four, maybe five kilometres where this would happen.

One of the things we don't want to get into is where we have to put a road beside a road, because then we have to start dealing with the MNR and they really don't want any more roads put into the woods than have to be there. We don't want to have to start widening roads and things like this, so we would change the type of trail that the person would ride on for that five kilometres.

**Mr Ramsay:** Is there any more time?

**The Chair:** About a minute and a half, if you have a fairly quick question.

**Mr Ramsay:** I would just maybe ask Mr Spina, who is really on top of this issue, is there anything wrong with recognizing in the act in a general sense—and I know you have previously—these two traditional users that we've identified here, trappers and prospectors, and give these people a little more comfort?

**Mr Spina:** The only concern I would have—and obviously, David, we'd have to look at the terminology—is that if you become too specific in the act itself, the very reason why we want it in there then also limits the opportunity to add any others down the road. In the regulatory environment, if you listed five or six groups—trappers, bait fishermen, prospectors, explorationists; we can go through the list—then if at some point we identify that there's someone else who perhaps should be added, you don't have to go through a legislative amendment. It's far easier to add them to the regulatory list. That's the only concern I would have.

**Mr Ramsay:** But the main ones we have now we could recognize in the legislation without limiting further inclusions, because I wouldn't want to do that either, but at least we could give the main groups that have traditionally been there some comfort now. I don't think that precludes any sort of regulatory change down the road to add other people.

**Mr Spina:** That's if we proceed with mandatory permits in general.

**Mr Ramsay:** Oh.

**Mr Spina:** Well, that's the debate. That's why we're here for first reading of the bill.

**Mr Ramsay:** Whether we do this at all.

**Mr Spina:** Yes. This is first reading; it's not second reading. As you know, if we were having hearings after second reading, a lot of this would be pretty well set in stone. We're haggling over small points. We're doing this after first reading, which means that it's far broader in scope and we can look at all elements of the bill. I'm sorry, I know you weren't at the other couple of days, but in general that's the reason why we wanted to come out to public hearings after first reading, to allow us the opportunity to look at the broader picture, especially to hear from people like Mr Calhoun.

**The Chair:** Thank you, Mr Calhoun. We appreciate you bringing your perspective.

**Mr Calhoun:** Thank you for the opportunity.



## SUDBURY TRAIL PLAN ASSOCIATION

**The Chair:** Our next presentation will be from the Sudbury Trail Plan Association. Good afternoon and welcome to the committee.

**Ms Vassie Lumley:** Good afternoon. I have assisting me today Janet Depatie, our president at the present time, and also Don Lumley, founding and past president of the Sudbury Trail Plan Association.

My position with the Sudbury Trail Plan Association is director of administration. The association is located in Sudbury, Ontario. I am here to represent the Sudbury Trail Plan Association and its eight member snowmobile clubs, all of which are members of the Ontario Federation of Snowmobile Clubs. On behalf of the group, I'd like to thank the government for their support and interest in snowmobiling and giving us the opportunity to speak to you.

As a member of the Ontario Federation of Snowmobile Clubs, we agree with the OFSC position that there are four cornerstones essential to making a mandatory OFSC permit successful. They are that the final authority on all matters and processes related to the mandatory trail permit must remain with the OFSC, especially use of permit revenues; that the OFSC mandatory permit must be an absolute and easily enforceable requirement on designated OFSC trails; however, we recognize that reasonable accommodation must be made for traditional access on crown land; and that trained OFSC wardens must have the authority under the MSVA to enforce mandatory OFSC permits.

Now I'd like to give you some background on the Sudbury Trail Plan Association. The Sudbury Trail Plan Association was formed in 1987. At that time only one OFSC club existed in the Sudbury area. This club sold 125 memberships at \$25 and had approximately 80 kilometres of trails in the Sudbury region. There was another club but that club folded due to the hardships of maintaining the trails that they had existing at that time. Once the Sudbury Trail Plan Association came into being and joined the OFSC, the existing club became a member of the association and the defunct club was rejuvenated and joined the STP Association. Within the next two years an additional six clubs formed and joined both the OFSC and the Sudbury Trail Plan Association.

As the clubs formed, the membership in the trail network grew in the Sudbury area. The association has experienced a growth from 125 permits to now selling approximately 5,500. It maintains with its club members 1,300 kilometres of trail. Our association does a direct mail-out to every one of our permit buyers on a yearly basis and we also maintain 60 to 70 permit-selling outlets so that the purchaser can acquire them in person.

The Sudbury Trail Plan Association assists the clubs in their administration and operational efforts. There is a great partnership among all the clubs for the betterment of snowmobiling in our area.

The association has one full-time administration personnel and one full-time operations personnel. We also

employ 20 to 22 groomer operators during the winter season, which became a necessity when the demands grew on grooming our trails more frequently for the traffic they were receiving. Each club, through their own volunteers, is responsible for preparation, signage and land use on private land for their trails. The association is responsible to groom the trails and to assist the clubs with land use with MNR, corridor routes and municipal lands and also to purchase the items in bulk to assist the clubs to perform their duties more efficiently.

### 1350

STP is also responsible for purchasing the groomers required to groom these trails. We presently have eight large pieces of grooming equipment. Over the past 12 years, we have had to replace four of them. Purchasing 12 pieces of equipment that range from \$90,000 to \$150,000 does put the association into requiring bank loans.

We have developed a strong partnership with the Sudbury tourism group that supports our snowmobile trail map and regional publications. Our association boasts a membership of 10,000 family members, and this is very evident when you ride our trails.

As an association, and as individual clubs, we have participated in generating revenues for charities for the past 12 years. The association and the clubs combined have raised over \$200,000 for charity. Twelve years ago, there was no tourism in the Sudbury area, but today we are pleased to say that the region benefits tremendously from our volunteer efforts. The economic benefit to the Sudbury region because of the snowmobile clubs and volunteers' efforts is approximately \$25 million per year.

The Sudbury Trail Plan Association and its member clubs are members of the OFSC and each is a not-for-profit, volunteer-driven group with a mandate to build and maintain snowmobile trails within their community. Many years ago, the trail system, as it was known in Ontario, was maintained by the Ministry of Natural Resources and growth was not possible because of lack of manpower. With the rejuvenated interest in snowmobiling in Ontario, the OFSC assisted groups of individuals to form clubs province-wide so that the trail network could grow in each community.

As members of the OFSC, we are mandated that trail permit revenues are all used towards snowmobile trails. We have proven ourselves as leaders in developing a world-class system because of our user-pay system that assists the clubs with part of the revenues required to build and maintain the system.

When the Sudbury Trail Plan Association and its member clubs joined the OFSC, they embraced the user-pay system because it was a must to generate the revenues required to build and maintain the vast network of trails in our area. In saying this, the association and the clubs must still fundraise through events and raffles on a yearly basis to raise the additional 50% shortfall so that they have sufficient revenues to maintain their system.

We find that in our area, because of the demands of tourism and local traffic, we are required to concentrate



more each and every year on fundraising to bring up the shortfall in our organization. This has become a problem over the past few years because of the volunteer burnout that we are experiencing. We address this need for more dollars, and the fact that fundraising is getting more difficult every year, by becoming more accountable to our members on how we spend our money and solicit donations. We have taken a great effort in training our Sudbury trail plan wardens to patrol our trails to ensure that each and every snowmobile using our trails has an OFSC permit. At the present time, we have approximately 75 trail wardens to assist the association in this task.

As for tourism trails, 12 years ago when the Sudbury Trail Plan Association was formed, as stated, snowmobile tourism in Sudbury was non-existent. Today we experience many riders who come to Sudbury or ride through Sudbury due to the vast interconnected system in Ontario. We have many businesses that open their doors to these touring snowmobilers and market that they are open for business today, but only a few years ago they closed their doors and went to Florida for the winter. This tourism marketing and subsequent increased traffic has put a real strain on our club volunteers because businesses and snowmobilers alike demand a perfectly groomed and signed trail system but don't wish to financially support the system any more than they already do.

An OFSC mandatory permit is crucial to assist our organization in ensuring that all snowmobilers using our trails on private or crown land have a valid OFSC trail permit to help in providing the operational dollars required to maintain our system.

In conclusion, the Sudbury Trail Plan Association wishes to thank the government for assisting us during Sno-TRAC and SST for capital purchases, but now it is time that we have some assistance for operational dollars to ensure that we carry on with the world-class system that club volunteers have built over the past 30 years. To do this, we feel we require the following: that the Ontario Federation of Snowmobile Clubs remains the final authority on all matters related to mandatory permits, as we do now; that this should include the design, production, sales procedures, pricing and the use of the revenues generated from the sales; that the OFSC mandatory permit be absolute and easily enforceable on all OFSC-designated trails because these trails have been built and made accessible in the winter only because of club volunteers. These volunteers have made these trails better and safer by spending over \$20 million per year for the sole use of snowmobilers who have an OFSC permit. If anyone wishes not to purchase a trail permit, there are many other trails on crown land that can be ridden.

In the past, the Sudbury Trail Plan Association has made available, and will make available, free trail permits to the OPP, regional police, MNR and other corridor users to perform their jobs. We have also not asked trappers or prospectors to purchase permits to access their lines or sites, but most do because of the fact

that the clubs have made their access much easier because of the groomed trails.

As stated, we have approximately 75 wardens who patrol the trails to ensure that all riders have a valid permit at the present time. This needs to continue, but what we also need to add to the mix is that the police, conservation officers and the STOP officers must have the authority to enforce the permit. We believe that an OFSC mandatory permit would assist our organization in acquiring the much-needed operational dollars to assist us in providing the product that snowmobilers have become accustomed to. If the club volunteers lose control of their user-pay system and the decisions on how to spend the money, it is very likely that we would lose many dedicated volunteers who have worked tirelessly in acquiring land permission from their local landowners.

Finally, the Sudbury Trail Plan Association and its eight member clubs, as part of the Ontario Federation of Snowmobile Clubs, must have the absolute authority over mandatory permits and trails to ensure the continuance of organized snowmobiling in our area. Thank you.

**The Chair:** That leaves us time for questioning. This time, we'll start with the government, Mr Spina.

**Mr Spina:** Thanks, Vassie. The question that I wanted to present—I never had a chance, by the way, to thank Don publicly for your presentation because we didn't have time for questions earlier today, and also to say thank you because I had the chance to travel with you on the Rendezvous '98 ride run from Mattawa to North Bay. That was great.

You talked about the mandatory trail permit being crucial to sustainability. Also, it should be easily enforceable on the trail system. I guess there's a twofold question. If you have people out there who are not riders, not members, would mandatory permits actually cover—because we've heard that they would not—the shortfall that you're anticipating as an organization in whole?

**Ms Lumley:** As the Sudbury Trail Plan Association itself or provincially?

**Mr Spina:** Provincially or even within your trail plan. Would there be enough additional memberships sold as a result of mandatory permits to be able to cover your shortfall?

**Ms Janet Depatie:** As president of the Sudbury Trail Plan Association, I don't think it would cover the shortfall. I think we'd still have to fundraise and we'd certainly still have to volunteer.

**Mr Spina:** The other side of it is the easily enforceable elements of it, because essentially we've got more snowmobile trails in this province than we have provincial highways. Clearly, the focus of the OPP is the highways and not the trail system. I know we don't have enough STOP, and even if the wardens were brought in, I'm not sure how many would be able to actually enforce a mandatory trail system. If we take that as a given, are there alternatives of revenue sources that could be looked at or considered instead of just mandatory permits?



**Mr Don Lumley:** There are two right now that I see would be very easy to address and implement. The first one would be a system that is used in Quebec and is also used in New Brunswick, where a portion of the registration monies goes back to the federation and back through the clubs.

**Mr Spina:** Sorry, this is the registration fee paid to the Ministry of Transportation?

**Mr Lumley:** That's right. At this time, most of the people in northern Ontario are exempt from paying that. Most of them do not have any problem with having to pay a registration if they know the money is going back for the betterment of the sport and back into the product.

I took a poll back I think in 1994 at the AGM of the OFSC. We posed that question, and about 98% said that if they knew the money was going back, they would have no problem with it.

1400

How Quebec implemented it—and I'm not sure of the exact numbers, but I'll use an example—their registration was \$25; the next year it was bumped up to \$35. That extra \$10 that was kind of a surcharge added on to the registration then went back to the Quebec federation. I know right now probably \$25 to \$30 out of that registration goes back to them, and they get a significant amount. I see that as a direct help. In my mind, probably more money would be generated back to the clubs through that than if it were just strictly a mandatory permit and trying to catch the free riders.

The other area I think the province could look at is—and I know it opens up a real ball of wax—if the landowners were given a little bit of tax relief for the use of their property on registration, that would also make it a lot easier on the snowmobile clubs. Quite often a lot of trails have to be re-routed every fall because the landowner comes in and says, "No, you're not coming through my property," or the land has changed. If there was some incentive for the landowner to make sure his property is being used, that in turn would save money for the organizations as well.

**Ms Depatie:** Mr Spina, you referred to "easily enforced." That is one of the reasons that we would like to see our wardens continue to be there, because they have the dedication to be out there and probably have a few more resources than the OPP or regional police have—the commitment.

**Ms Lumley:** At the present time, having 75 wardens in the Sudbury area alone, if they didn't have the power to enforce the permit, we would have about 12 STOP officers and six police officers that do patrol our trails. So those 75 people would be out of the picture.

**Mrs Bountrogianni:** I have a question for Mr Spina that I wanted to ask earlier but didn't get a chance to ask, and if there's time, I have a couple of questions for Ms Lumley. But first I'd like to apologize for being late. I had a meeting at Northern College and I made my colleague late, and I apologize for that.

Mr Spina, Mr Lumley earlier related to complementary amendment number 11, where the owner or

snowmobile can be held liable to fine provided under this act. His concern was about the snowmobile rental business, whereby an owner could be held liable for the 20 or so snowmobiles not under his care and control, and that the snowmobile business was very fragile and this would make conditions even more difficult for them. Could you comment on that? Would this act encompass the rental business and the owners of those?

**Mr Spina:** The staff in the Ministry of Transportation are looking at the issue of both liability and insurability on all aspects and whether it can or cannot be tied into the mandatory permit process, which again can make it more complex. For further explanation on the direct impact, I think Mr Lumley would probably be more experienced than I to address that.

**Mr Lumley:** At this point in time, if a rental agency has machines going out, it's the actual operator of the vehicle who is responsible. If this part of the act is implemented, then that person would be responsible for 20 or 30 or how many machines they have. As I said, in Quebec right now they're running 3,000 rental snowmobiles, but the onus is on that person who takes the rental snowmobile out for the operation of it, not somebody who has no chance of governing how that machine's going to be operated.

On a one-to-one basis it's a little bit different. If you're lending a snowmobile to somebody, you make sure that person is responsible. But when you're in the business of renting it and really the dollar is the factor as to who gets the machine—and you can sign all kinds of waivers and areas of responsibilities and what not, but if still the law says that the owner is the person who's renting with the rental business, that would definitely have an impact on starting to build the rental business in Ontario.

**Mrs Bountrogianni:** Do I have time?

**The Chair:** For a brief moment.

**Mrs Bountrogianni:** Ms Lumley, you mentioned that your fee was \$25. Is that still what your club fee is?

**Ms Lumley:** No, that was many years ago. That was the OFSC permit at that time. Over the years it has increased.

**Mrs Bountrogianni:** I was wondering how you were able to do the miracles you were on that. I had this picture of you—

**Ms Lumley:** The trail was only 80 kilometres at that time.

**Mrs Bountrogianni:** You also mentioned that most trappers or prospectors do purchase permits. Do you have any idea percentage-wise—I know you can't have an exact number, but—

**Ms Lumley:** No. It's just from hearing that they are purchasing the permits because it is an easy access to get to their lines or to get to their sites, but it's not something we've asked for them, because we know they are exempt.

**Mr Dunlop:** I have a really quick question I wanted to ask Mr Lumley this morning but I didn't get the opportunity. You have a lot of experience in snowmobile travelling and you've obviously visited a lot of states and



provinces. What jurisdiction in your opinion has the best system in place right now?

**Mr Lumley:** As far as administration and operational or as far as the trail quality?

**Mr Dunlop:** The overall system.

**Mr Lumley:** For trail quality it's still Quebec. Ontario is a close second, but only because Quebec is uniform right from province to province. They've been at it a lot longer than we have. We've played catch-up in the last 10 years to where they are, and they of course have taken off from there. The two systems that operate best as far as administration of the sport of snowmobiling and have set the example throughout Canada are Ontario and Quebec. There's not that much difference at this time between the two systems. Quebec was the first; then came Ontario; then came New Brunswick, and from there, snowmobiling built across Canada.

**The Chair:** Thank you very much for taking the time to make your presentation here today.

#### LAKE HURON-ARCTIC REGION BAIT ASSOCIATION

**The Chair:** Our next presentation will be from the Lake Huron-Arctic Region Bait Association. Good afternoon and welcome to the committee.

**Mr Luc Charette:** Thank you very much. I'd like to apologize first. If I had known what type of format it was, I would have been here this morning and I would have gotten a little bit more feedback. This is the first time I've come to one of these, so next time I'll come here in the morning like everybody else and check things out.

**The Chair:** This way your perspective is fresh.

**Mr Charette:** I listened to two groups, and I'm going, "OK; these are all points I would have liked to have touched on."

First I'll introduce myself. My name is Luc Charette. I'm from Iroquois Falls and I am a family man. I'm a father of four children, and they keep me busy. I also work for municipal government. I work for the recreation department, so I do have a little bit of experience with the ins and outs of different rules and regulations and implementing things. It gets pretty tricky, and I realize that. I also have a business, a small bait and tackle store which started out as a hobby and grew into something a little bit more than I expected. One of the things I do in my shop is sell trail permits. I don't sell anything for snowmobiles or anything like that, but they've asked me to sell the trail permits, and I do sell them. So I'm not against trail permits. I get a lot of feedback. Mind you, I can tell you some good stories.

The Bait Association of Ontario is very new on the board right now. We just started three years ago. We've grown in leaps and bounds. Although the association is new, the industry itself is fairly old. The BAO was formed in partnership with the Ministry of Natural Resources because there was a little bit of a concern about the industry. I guess the ministry, not realizing that

the industry was so viable, started looking at the numbers and noticed that there is quite a bit of money in the bait industry, and as opposed to doing what some of the other provinces have done, because of certain problems to eliminate live bait, they're trying to regulate it. We're doing that with the ministry and having sessions to do that. That's a brief history. That's why I joined them and that's why I remain with them, because I like the idea that they are looking into the industry and trying to keep it viable. They want us to manage, they want us to monitor and they also want us to make sure that we keep our resources intact by different types of fishing, and pulse fishing and grading.

I'm here representing the Lake Huron-Arctic region. Those are the same boundaries as the MNR northeast region, which extends from Wawa to Quebec and from the French River to Hudson Bay, so it's a pretty big area. I didn't contact too many people. What I basically decided to do was to come and give you my views, and a little bit of theirs too, but mostly mine. I should touch on theirs at the same time.

I have three key points. It's repetitious a little bit from what I could see, but some of us have traditionally used these trails or some of the trails for our business, myself not as much as others, but there are times that we do use the trails to get to a certain pond or whatever. It could be just on a quarter-mile. Sometimes it's just coming off a road, getting on to the trail. It's very different.

1410

One of the points that I got from some of the guys who have been in the industry for a little bit longer is that some of those trails were initiated and maintained by them to a certain extent, just keeping it clean and whatnot, so they feel like they should be using them or whatever.

Again, I would like to also stress the fact that we are in a partnership with the MNR and we do work fairly closely with them as an association.

A lot of it is education. When you're trying to implement rules, regulations, exemptions and whatnot, if there's no education behind it, nobody is going to know what's going on, so obviously everybody's going to be breaking the rules or trying to get around the rules. But if you know what your boundaries are, then you say these are the boundaries and that's what you have to live with. Again, the reason the ministry is working with us is, first of all, they want good inventory monitoring in the management of the resources.

The third point I'd like to make is that our licence fees were increased about two years ago—that was part and parcel of this new association and trying to regulate and put in more rules—from \$17.50, which I agree was very low, to \$300, but it's still an increase. The point I'm trying to make with that is that we're already paying licensing fees to access this crown land. That's the impression that I get myself. I have to be careful sometimes. When I'm going to a certain pond that I want to get to, it's just in the last few years now that I'm starting to get educated, that I'm starting to think: "Oh



my God, this might be private land. I'd better look into that." When I look into it—although sometimes there isn't a trail going through—you still have to get the landowner's permission to access their land, plus get the OFAC permission to access the trail. For private land, most of the people who trap minnows and stuff have to go talk to the landowners anyway.

Basically I'm here because we'd like an exemption from paying the fees to ride the trails necessary to operate our business—nothing more than that. I know everybody's saying we've got to keep everything simple and stuff, but let's face it, you can't keep anything simple. You can say it's black and it could be different shades of black. That's my impression. I know it's difficult, but you have to look at both sides and I guess go down the middle.

We're not opposed to Bill 101, but we need access to a small portion of the trail system to get to our licensed area, and we all have to carry our licences when we are trapping bait. If an MNR officer stops us and we're trapping bait or conducting our business, if we don't have our licence on us we get charged. We also have to keep a log book now, something new that came in with the BAO.

Some of the trails we have to use to get to our area; some of the trails are on our area. I realize there is a problem with identification. Again, I'd like to stress that some people do use machines that might be trail-oriented. We can't use that as an identification, but if you're going to do something to identify something it's like rule of thumb. It's like a glassy-eyed driver. Oh-oh, you're not sure. But if he's driving an old beat-up Bravo with a sleigh in the back and three or four buckets of water, he ain't going to Cochrane for a coffee, you know. It's not that simple, but with the education, I would like to see guys in my industry say: "OK, we got the exemption but don't start abusing it. Don't start going to Cochrane for a coffee." That will be our part to say that to them.

So there's the equipment, the type of machine and the area that he's in. I'm from Iroquois Falls. If I'm in North Bay and I get stopped and I pull out my licence for trapping minnows and I'm riding an Indy Trail Deluxe and I'm all in leather—nothing's simple though. People are always going to try to get around the system and stuff; that's never going to change.

The association also directed me to mention that if there's something we can do to help the identification of these BAO, like they identified me here. Everybody thinks I work for the MNR now. This was because we did some instructing. That's identification, and you get set apart from the rest.

Just in closing, I would like to say that I know no laws are simple and it's always difficult. I heard something about the local level, and I would really like to talk about that for just one second. I remember a buddy of mine had a trapline. He came to me and asked, "Am I allowed to use the trails, because I've got a trapline?" I said: "I don't know. I think so. I think I read something. I'm just selling the licences. I'll find out." So I spoke to the

president of the club, and he said there is nobody who is exempt from riding the trails without a trail permit. That's the message that I had to come across with, so local level, fine, but maybe the education has to be there a little bit more.

I didn't type up a letter or anything like that, which I'll do later on. When I get home tonight, I'll type up something with my points on it, try to make it a little bit clearer and I'll forward it to Viktor.

I know that it's a good industry. I like the snowmobile industry, and it's brought a lot of people to Iroquois Falls. I don't want to put any blocks to it or anything like that, but we have to also remember it has grown. I don't know how big it's going to get, but it's really big, and when you hit a winter like last year, with the weather being the way it is, that really kills it big time.

Anyway, I probably went off topic about 10 times but that is it for me.

**The Chair:** Thank you very much, and that leaves us some time for questioning. This time we'll start with the Liberals.

**Mr Ramsay:** Thank you very much, Mr Charette, for your presentation. It was excellent, right from the heart.

I don't think this has to be that difficult, especially in your particular avocation. As you say, you're not running up hundreds of miles to access baitfish. Because of your having to carry water and the equipment you have to have, I take it you must use sleds—

**Mr Charette:** Yes, definitely.

**Mr Ramsay:** —all the time, because you're transporting. Because you're licensed, again, it's easy to control, so that I think we need provisions in the act for your industry also. Being a traditional industry, you are licensed so it's easy to control and you're licensed to a certain zone, as you said, a certain management area.

You're right, you wouldn't have the right with the exemption to be in North Bay. In your particular case, if you want to do that you'll get the proper permit. I think that's the control, so if you were stopped down in North Bay, your licence would say that you're entitled to be in the Iroquois Falls area in these zones and you'd be fined. I think it's fairly simple with the work you do, being licensed, to enforce that exemption. Somebody will try, I suppose, to abuse that, but I think that person could be caught with good enforcement. I don't think there should be a problem. That's something we're going to move to, because I'm just concerned that if we don't see the regulations and have to trust that these will come out later and that we were promised that trappers and prospectors, but maybe not the bait fishery—I think we need that up front.

So far we've identified at least three major traditional users that need exemptions but only for their particular use, and in some cases like yours, it's not great distances so it's very limited, and I think it can be controlled. We're going to be moving amendments to that. I hope the government hears our message.

**Mr Charette:** The only thing I wanted to say is—because you've reinforced my idea; obviously identification is a big key and I realize that—my personal view is



a big key and I realize that—my personal view is somebody could be identified beforehand, even before there is a stoppage, because the guy's in a hurry, he's got bait, and as soon as he gets stopped, he asks, "Why are you stopping me?" You get into the little tiffs here and there. It depends who this guy is. Maybe I played hockey against him last night and he gave me an elbow.

You're getting into personalities, so it's important to be exempt and to have that identification, whether the bait association and the MNR can come up with a sticker that we can use or whatever. Of course, there are going to be some spot checks and, again, that should be told to the bait dealer: "You're going to be checked if you're in North Bay and you're trying to do this." It's not right.

1420

**Mr Ramsay:** There are two things there. You're right, some sort of identification tag would be helpful, but I also think you'll find that it's local people, the local wardens who are doing the enforcement. They know you and they'd see you there. You're running to the same lakes you usually go to. I don't think that would be a problem, because it's local enforcement.

**Mrs Bountrogianni:** Very quickly, you mentioned that the club you talked about said: "No, they have to have a permit. There are no exemptions." I've been hearing different things in the last three days. Would you say there is inconsistency across the clubs on the issue of exemptions right now?

**Mr Charette:** I'm not going to point them out for that, because it's like that in every industry. I've gone through ministry offices where I've asked three different people the same thing and I get three different answers. It's like that all over. I'm not just saying that club was like that. The people who run those clubs have a hard time. They get razed a lot and they get a lot of people who are against them. Even their members are always giving them a hard time: "You're not doing it right. You're not grooming the trails." After a while they get fed up—I don't blame them—and say: "Hey, don't bother me. Nobody's exempt." But yes, I'd say there are some inconsistencies.

**Mr Dunlop:** Thanks very much for coming. We're starting to identify more of the traditional users. A couple of points: How many people, in round terms, would belong to your association? Also, it came up at one point yesterday or the day before about people using the trails and just getting their own firewood. People would go out and cut wood or they'd cut a bit of wood to sell. Do you know of many cases of that type of thing happening?

**Mr Charette:** In our industry?

**Mr Dunlop:** No, this is just a separate question from bait. The first question was, how many people do you represent as an association? But do you know of anybody who actually uses the trails to go and get firewood and that type of thing?

**Mr Charette:** The first question is, what's happening with the association is that at a certain point in time they were—it's also inconsistent, because you have three different types of licences. You have a harvesting licence,

which includes harvesting and selling. You have a bait dealer's licence, which just includes selling. The harvesting licence is where you can actually go out and trap the minnows. There are people out there who don't have that licence. There are also people who have just what they call—and those went up quite a bit because they kept it fairly low.

The numbers have changed so much over the last two years, I wouldn't be able to tell you. In my area, Iroquois Falls-Cochrane, you're looking at maybe—if I can count them. Let's see. In Iroquois Falls and Cochrane, let's say there are about 10. That's pretty well as far as I can go. But I can get you that information, if you would like, and I could forward it to you.

**Mr Dunlop:** It might be nice to have it.

**Mr Charette:** OK, I'll mark it down.

**Mr Dunlop:** The licensed ones. The ones who have bought their licences.

**Mr Charette:** I'll get you a number for our region. All I've got to do is call the ministry, and they'll probably make me call somebody else. I'll end up getting it.

**Mr Dunlop:** Thank you. Don't go to a lot of work on this.

**Mr Charette:** No, no, it's not a problem. Do I forward it to Viktor? The number of people who are licensed to harvest bait, no problem.

The other one—firewood.

**Mr Dunlop:** I was just curious if many people were actually doing that here.

**Mr Charette:** I haven't seen it. I'm not going to say I have, but I've never looked for it. I myself don't use the trails very much. We own some land in a co-ownership, and my snowmobiles stay in there. We just kind of go around in circles more or less. I've seen people stop their trucks on the side of the road and get wood. I don't know whether they have a licence.

**Mr Dunlop:** It came up that they were using their snowmobiles and little trailers to go get wood. That's—

**Mr Charette:** I think it would be a little more feasible to use a truck. There's only so much wood you can get with a snowmobile, and it takes a lot more time.

**The Chair:** Thank you very much, Mr Charette. We very much appreciate your bringing the perspective of the bait association here today and adding to our deliberations. We appreciate your taking the time.

#### ONTARIO FUR MANAGERS FEDERATION TIMMINS FUR COUNCIL

**The Chair:** We have had a cancellation of the 2:30 group, so our next group is the Timmins Fur Council. Good afternoon and welcome to the committee.

**Mr Larry Reeve:** Hello. My name is Larry Reeve. I'm also representing the Ontario Fur Managers Federation, which has some 5,000 members. It's the largest voluntary organization in Ontario.

I was here this morning, and I heard a few of the things that were happening. I had time to call back to our



office—that's the Ontario federation office in the Soo—and get a little bit of input from there. One thing they feel very strongly about is that the exemption for trappers on these trails should be in the act and not just in regulation, because regulations can change in very short order, we have found, and they would like that established in the act itself when it's put forward rather than just as a side regulation.

The other thing here too: A number of times this morning I heard different snowmobile clubs saying that trappers would be exempt on their traplines on these trails. This wouldn't be suitable, because a lot of trappers have been travelling along like especially hydro lines from Timmins. They travel hydro lines down to their traplines and then do their business of trapping. A lot of the travelling is done off the trapline on the snowmobiles. Clubs have taken over a lot of these hydro lines and old roads and whatnot that the trappers previously used, so just an exemption on the trapline itself wouldn't be suitable for the trapping industry.

Trappers are reasonably honest people. I heard someone stating that the majority of trappers are members of snowmobile clubs. I think this is in the case where they actually use these trails for recreation. I know a lot of our fellows do. Personally, I get enough snowmobiling just going around my trapline and I get nothing out of going on a trail. I don't think I'd ever join one for that experience. I don't particularly like the idea.

Another thing too: I don't know if it can be built into this, but when these new trails are going in, it would be advantageous to everybody to consult with the Ontario Fur Managers Federation and the local fur councils on where these trails are going. In a lot of cases, they're putting them through moose yards, prime lynx habitat, over trout lakes. There are a lot of places they've gone in the past where a little bit of consultation with the trappers might have avoided a lot of problems that exist today.

These plans for trails, which I understand they're going to expand quite significantly in the future, should also be put into a public hearing phase where other groups can take a look at these plans, because there are a lot of values out there that maybe these snowmobile clubs don't recognize. There should be input from the public on any of these trails.

Maybe some of this money collected from the new licensing fee that's proposed should be designated to clean up some of the problems that present trails do have, like I say in the case of going over lakes that are sensitive, and changing them to different areas.

One thing we experience at the present time—we have an agreement that we are exempt on these trails. The trail wardens should get some type of education and training on where their bounds are and what the rules of the trails are, because a lot of times trappers have been challenged on the trails. We were at a federation convention this past weekend and one gentleman brought up that he was going with a farmer—the owner of the land and the trapper—to a spot where he was having a problem with beavers, and he was challenged by one of the trail

wardens and more or less told to get off the trail. With a bit of persuasion he backed off that stand, but it could possibly have closed that trail for the entire history if he had not. But they should be educated before they are allowed to get this power.

I have a couple of questions I'd like to ask you before I go on. What type of tenure are these clubs getting? Is it a land use permit? Is it ownership of these trails? What is it?

1430

**The Chair:** Mr Spina.

**Mr Reeve:** Is this our expert?

**Mr Spina:** I caught most of the question. I'm sorry. What type of tenure—

**Mr Reeve:** —are they getting on this trail? Is it a land use permit? Is it ownership of that land? What type of tenure do they have, or are they going to have, on this trail, if they're going to be charging people to use them?

**Mr Spina:** Currently, the federation through the local clubs applies for land use permits from MNR on crown land. At this stage that system is already in place, and we really don't see that changing at all. It's the same kind of system. This is the dilemma that MNR is in the process of trying to handle. Right now, the enforcement is under the Trespass to Property Act because technically the federation has the right to be on the trail where they have that LUP in place. If someone chooses not to pay the fee, it's either, "Get off the trail," or they can lay a charge under the trespass act. That's currently the way the structure is.

The only difference with this is that if a mandatory permit is implemented, then it becomes a law as opposed to a rule and a right that has been granted to the federation and its member clubs. If this permit goes into place it becomes legislation. You actually have the option, at this point, to pay the \$150 plus a \$30 surcharge if you were caught on the trail; that's notwithstanding the exemptions. But if you were caught on the trail and you don't want to get off it, you could pay your \$150 full fee plus a \$30 surcharge for being caught on the trail, so it's a \$180 cost.

Under the proposed legislation what you would have is, if the person doesn't get off the trail or doesn't choose to pay up, and we're struggling with that, he or she is liable for a \$200 to \$1,000 fine for not having the permit, plus all the other pieces of identification that would be required: driver's licence, insurance, provincial registration certificate etc.

**Mr Reeve:** I assume all of this is in place so that the snowmobile clubs can regain their expense of maintaining these trails; is that correct?

**Mr Spina:** You're talking about the fee?

**Mr Reeve:** All of the fee and the structure they may fine and so on.

**Mr Spina:** Yes. They collect it all now and they would collect it all in the future, with the exception of the fine if there were a charge laid under this act and the fine ends up going to the provincial court system, in which case then the revenue for the fine portion is divided



between the municipality and the province according to the court structure as it is now.

**Mr Reeve:** I wanted to clear that up before I went on because trappers spend most of their time maintaining trails, not trapping. Especially in the boreal forest that's here, I imagine I spend 10 times as much time trying to keep my trails open as I do trapping.

Other people use them; fishermen use them. One of the big problems with the snowmobile trail system is that people have a habit of seeing our trapping trails coming off the system and taking them to see where they go. Some of them are stealing traps and some of them are stealing fur. Many of the times people stand, look at the trap and urinate right there, and that trap, that set, is not good for the rest of the winter. They don't realize what they're doing to it.

They have high-powered machines and they tear up the softer trails which we have. We use work machines. They aren't the high-powered machines that they use. They end up moguling them beyond use. We have to use the same type of equipment they do to remove moguls.

We should be entitled to the same consideration they are. We should have some type of tenure or land use permit on our trails; if not, that they just cannot take our trails over again, which is happening. We spend a lot of money on them, the same as they do, and we would like this in our rights also.

That's about all I have. Thank you.

**The Chair:** That leaves us with about two minutes, if anybody has a quick question. Mr O'Toole.

**Mr O'Toole:** We've heard a couple of presentations where they toyed with the idea of exemptions. Of course, I don't think that's a problem from what I've heard. There are special traditional users. But how about the idea of the collection and administration part of that? Would you have a problem with paying the fee and getting it rebated to you?

**Mr Reeve:** Yes, I would, very much. In most cases we are on our trails. They should really be paying us a user fee.

**Mr O'Toole:** Do you see the economic benefit, though? I mean, you've sat here—

**Mr Reeve:** Quite converse to what you're thinking, it's not an economic benefit to us; it's an expense. These trails are wide. I don't know if you know anything about wildlife. Marten don't like to cross a wide expanse. They won't cross a wide road if they can help it. They won't cross a railway track if they can help it. By making wide trails, you're restricting the travel of marten. You're chasing fisher, lynx, wolves and so on back into the bush, away from these things. You're destroying habitat that they can live in by putting trails through. It's of no benefit whatsoever to a trapper to have a trail through his trapline.

**Mr O'Toole:** I see it to the general economic condition of the community.

**Mr Reeve:** That's quite understandable, and this is why we've never really said anything about this before, because there was an understanding. We understand there

are other user groups. There are fishermen; there are hunters. Almost every lake a hunter or a fisherman goes to by snowmobile is a trapping trail. We have those trails that go in to trap beaver in those lakes. Fishermen use them all the time; we have no problem with that. But we do have a problem with paying to use our trails, yes.

**Mr Ramsay:** I agree with you. I think we need to have some general language in the legislation concerning, at least up until now, at least three traditional user groups to exempt you from this fee. I think that needs to be in the legislation. It just needs to be very broad language, and then the rest of the detail could be in regulation, the use of it in pursuit of the business of bait fishing, trapping or prospecting. That means travelling to and fro. I guess the word "authorized" would be in there, and in the regulation we could have the details. Obviously you are licensed, so it's all controlled, and the details can be in the regulation, but I think the general language needs to be in the legislation so that when we start this, if the government proceeds with this, at least those three traditional users, who were there first, are recognized.

**Mr Reeve:** I think you should recognize mining companies also, because they do a lot of exploration from these trails. A lot of these trails cross patent mine claims, which will likely be closed if they are not exempt.

**The Chair:** I guess that's all the questions. Thank you very much. We appreciate the perspective you brought to us here today.

## CONSEIL DES TRAPPEURS DE HEARST

### HEARST TRAPPERS' COUNCIL

**The Chair:** Our next presentation will be from le Conseil des trappeurs de Hearst, M. Morin. Bonjour et bienvenue au comité.

**M. Conrad Morin :** Je vais faire ma présentation en français et puis, par la suite, je pourrai répondre aux questions dans une langue ou l'autre at the end. I'll be able to answer your questions directly without your having to translate.

Alors, merci. Bonjour. Je crois qu'on vous a distribué un document que je vais simplement lire un petit peu, et au fur et à mesure je vais ajouter quelques items qu'on a peut-être oublié d'ajouter au texte.

Monsieur le Président et membres du comité, membres du public et des médias, je suis ici aujourd'hui devant vous à titre de trappeur d'abord, de président du Conseil des trappeurs de Hearst, et finalement à titre de directeur de la zone 3A de la Fédération des gestionnaires de fourrure de l'Ontario, mieux connue sous le nom Ontario Fur Managers Federation. Pour vous situer un peu, la zone 3A comprend les régions de Hearst à Iroquois Falls le long de la route 11, y compris Kapuskasing, Fauquier, Smooth Rock Falls et Cochrane.

Je dois vous dire en toute honnêteté que je suis un peu inquiet au sujet du projet de loi 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement, tel qu'il est écrit. En premier lieu, il n'y a



aucune provision voulant exempter les trappeurs de la province, ou les pêcheurs, prospecteurs et autres. Deuxièmement, si je me base sur les expériences du passé, telles que *Des terres pour la vie*, et le parc Missinaibi, nous osons prédire que même s'il y a semblance de consultation publique sur ladite Loi 101 aujourd'hui, les décisions ont déjà été prises et que rien de ce qui est proposé au cours de ces audiences ne changera le texte de la loi. Tout en disant cela, nous gardons toujours espoir qu'un jour — aujourd'hui peut-être — nous serons non seulement entendus mais aussi écoutés, vraiment écoutés.

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ICI dans le nord, et là je ne parle pas du « nord de Toronto » mais plutôt du vrai nord, c'est-à-dire tout le territoire situé de la ligne est-ouest—Sudbury-Sault-Sainte-Marie-Thunder Bay en allant vers le nord—les sentiers et les chemins donnant accès aux terrains de la Couronne ont tous été construits par les compagnies forestières et minières, et ça souvent avec des argents provenant des fonds publics. Ces sentiers ont pour la plupart été laissés à l'abandon. Les trappeurs, au cours des années, ont continué à maintenir un certain nombre de ces sentiers et ces chemins pour ainsi garder accès à leurs terrains de trappe bien avant la venue des clubs de motoneige. D'autres, tels que les avides pêcheurs, ont fait de même.

Arrivent les clubs de motoneige et le phénomène de la randonnée en motoneige. Ces mêmes clubs ont suscité et obtenu la collaboration des trappeurs et des conseils de trappeurs dans notre région pour établir des sentiers convenables pour que tous puissent jouir de la belle nature du nord. Les trappeurs et leurs aides continuent de développer et de maintenir un grand nombre de sentiers sans demander de rétribution et sachant qu'à l'occasion ils seront probablement utilisés par d'autres. Présentement, les trappeurs du nord entretiennent une très bonne relation avec tous les clubs de motoneige, et nous tenons à garder cette relation intacte.

En acceptant de collaborer à la mise sur pied de sentiers de motoneige passant sur les terrains de trappe, le trappeur accepte par le fait même qu'il y aura une augmentation considérable de circulation sur le terrain de trappe, ce qui peut affecter dramatiquement la capture de certaines espèces d'animaux à fourrure, tels le lynx et la martre. C'est beaucoup plus évident lorsqu'on se rapproche des villes où l'achalandage des sentiers est beaucoup plus élevé, tant le jour que la nuit.

De plus, beaucoup de nos membres possèdent plus d'une motoneige, l'une pour la trappe et l'autre pour la randonnée. C'est-à-dire qu'ils paient déjà pour se servir des sentiers pour la randonnée. Certains d'entre eux doivent parcourir de bonnes distances avant d'arriver sur leur terrain de trappe et empruntent souvent les sentiers « entretenus », sentiers qu'ils utilisaient déjà depuis longtemps avant l'arrivée des clubs et des associations de motoneige.

Nous demandons donc simplement que la Loi 101 soit modifiée pour exempter les trappeurs de la province de

payer du surplus pour utiliser les sentiers entretenus par les clubs, soit pour se rendre à et revenir de leur terrain de trappe, ou de voyager sur ledit terrain de trappe. Ceci dit, je peux vous confirmer aujourd'hui que nous avons approché les clubs de motoneige locaux, c'est-à-dire dans notre région, et avons reçu leur appui et support pour notre demande.

Je vous remercie de votre attention et je demeure confiant qu'enfin vous nous écouterez et que vous utiliserez un bon jugement en répondant affirmativement à notre demande.

Je vous demande, si vous me posez des questions, de peut-être parler fort parce que je suis un peu dur d'oreille. Merci.

**The Chair:** Merci. The questioning this time will commence with the Liberals.

**Mrs Bountrogianni:** Thank you very much. I appreciate it being in written form. I understood a little bit, but forgive me. I am learning, though; I'm taking a course.

**Mr Morin:** OK. Keep working.

**Mrs Bountrogianni:** I think I understood. The equipment wasn't working, so if I have not understood, please forgive me and correct me.

**Mr Morin:** No problem.

**Mrs Bountrogianni:** I take it, then, that you are against the fees for trappers for the very same reasons that I've been hearing all morning and all afternoon?

**Mr Morin:** Basically, yes, for the same reasons.

**Mrs Bountrogianni:** Is there anything else you want to add that perhaps I didn't understand? I just want to make sure—

**Mr Morin:** The reasons behind it?

**Mrs Bountrogianni:** Right.

**Mr Morin:** The main reason is that most of those trails were originally made, in our area anyway, by lumber companies, mining companies, junior exploration companies and so on, and most of them were abandoned with time. Our trappers have consistently maintained those trails or roads or access trails to their traplines with no remuneration, no monies from anybody except from our own pockets and from the resource collecting that we are doing. Then along comes the advent of the snowmobile, and all of a sudden we have to, to put it bluntly, move over to let the clubs handle it, and we're going to be charged to use trails that we have been using for 20 or 30 years, which I feel is kind of unfair. That's the main reason.

The other fact is that most of the clubs in our area have approached us either as councils or trappers' associations, mainly through the local citizens' committees and individually, asking the trappers if it was all right if the trail did pass on their trapline, again with no conditions. In 99% of the cases I would say that was done very willingly and co-operatively. We would hope that down the road that co-operation would be maintained on the other side by letting us use those trails at no cost, and, I would even add, not just the trails on the actual traplines, but travelling to and from the traplines. Some of our trappers have to travel anywhere from 15 to



20 miles and more before even getting onto their trap-lines, so they have to use some kinds of trails, and in some instances they are groomed trails.

If I can put it this way as well, if you look at the new machines being put out by manufacturers now, some with the deeper tracks, they are the ones that break up the trails. Trappers' machines don't break up trails. They've got a nice sled dragging behind them full of equipment. It just smoothes everything out. So that's maybe another plus to having a trapper travel those trails.

**Mrs Bountrogianni:** Thank you very much.

**Mr Spina:** Merci, monsieur Morin. Je parle mal le français, moi. So please, when you return home, give my greetings to Mayor Jean-Marie. He's a nice man. I was cordially greeted by Jean-Marie whenever I was in Hearst.

I want to go back to your statement on the second page, and I certainly will not be pronouncing it as well as you, that the trappers of the north have a good relationship with the snowmobile clubs, and you want to ensure that relationship remains intact. I can assure you that was always the intention of the government and certainly of this bill. In fact, in response to the input that was received prior to the drafting of the bill, we instituted section 9 of the bill, which amends section 26—I don't expect you to remember this—of the Motorized Snow Vehicles Act and says regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or regulations. Regulations may also be made general or particular, and different classes of persons may be identified for exemptions from the act or regulations. So there are three clauses in section 9 of the bill that specifically address what I just summarized.

If mandatory permits are going to be introduced and passed as part of this bill, I fully support that the exempted parties will be clearly laid out either in the bill or in the regulations. So those users would be even better protected, because then it's not just a cordial handshake agreement between the exempted user and the local club; it is laid out in the regulation.

**Mr Morin:** Exactly. That's what we would like to see.

**Mr Spina:** Good. Thank you, monsieur Morin. Bonne journée.

**Le Président :** Merci, monsieur Morin. Nous vous remercions pour votre présentation. Au revoir.

### TOURISM TIMMINS

**The Chair:** Our final presentation this afternoon will be from Tourism Timmins. I take it you are Mr Saari. Good afternoon and welcome to the committee.

**Mr Will Saari:** Good afternoon. Thank you, Mr Chair.

**Mr Spina:** He followed us from Thunder Bay.

**Mr Saari:** You can run but you can't hide, Joe.

I'd like to take this opportunity to thank the committee for allowing me this opportunity to express some of my opinions on Bill 101. To preface that, by way of intro-

duction, as the Chair, Mr Gilchrist, has said, I represent Tourism Timmins. My name is Will Saari. I have been practically a lifelong resident of northern Ontario, here in the city of Timmins. My present occupation is as the tourism coordinator for the city, so as such I'm responsible for the tourism promotion and marketing of this city and of our area. Snowmobiling certainly is one of the products that we're involved in. In fact, as a marketer and salesperson, I wish that every product I sold had an annual growth rate of 50% to 75% to 100%, year after year. It's certainly been an easy sell. We certainly do have the product.

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On the personal side, I have been a snowmobiler for approximately 28 years now. No, I'm not that old, but around here, back in those days, you started very young. You went out on your family's farm or out to the cottage and you rode around the fields and the lakes and that sort of thing. The growth of the sport in this area over the years has been a real eye-opener for many long-time residents of the north.

I'm not going to speak today as to the particulars from any one interest group. I realize there are points of view from various groups, for example, traditional users and whatnot, but I'm not going to get into all of that. My presentation is fairly brief. I believe you have a copy of it in front of you. The points I have here are points that I will go over and provide, in some cases, a little bit of additional information.

The first point, that tourism benefits from organized snowmobiling in Ontario, is pretty self-evident. Obviously the committee recognizes this, or else none of this would have happened in the first place. But I put it here by way of giving you the background as to why I make some of the comments I make later on in the presentation. Obviously it's a very high-grossing activity, with close to \$1 billion in annual revenues, as we're all aware. Communities throughout the snowbelt, and particularly in northern Ontario, have had an equal opportunity to take part in this new economic boom. In fact, let's face it: especially relative to the last couple of years, we've had more than equal footing and have probably benefited more, I know in our particular area, than probably any other area in the province.

The demographics for snowmobilers show a very high-yield market, and from a tourism marketing point of view we find it's very interesting, from doing surveys and whatnot, that a lot of these visitors come back at other times of the year. So it's certainly a crossover market. So those who happen to be touring through our area in the wintertime often take the time to come back with their families and others during the summer months.

It is evident, however, that snowmobile tourism definitely places additional strain on the resources and on the volunteers of the local snowmobile clubs. As a tourism marketer I'm very aware, and I think, generally, there is a new awareness among tourism marketing professionals who are marketing snowmobiling, that it's something that has to be taken into account.



We are selling a product that is owned by a particular group—and when I say they own it, they own it in the sense that developed, organized snowmobiling with the level of grooming and signage and the safety aspects that we have today certainly came about as a result of the OFSC and the member snowmobile clubs. I can tell you that from an accommodations point of view, even this particular property that you're sitting on, which is a magnificent property that I can sell on behalf of my community, probably wouldn't be here if it wasn't for snowmobiling. It's certainly a big market that they're going after here.

Why is organized snowmobiling successful in Ontario? Again, my view is based on my experience and also my personal experience as a snowmobiler. The sport promotes a sense of adventure and fellowship. It's breathtaking. If any of you have snowmobiled—I know, Joe, you have; I don't know if any of the other committee members have, but it's certainly an exhilarating sport. But, quite frankly, what I enjoy even more than the actual riding, quite often, is the little trailside stops where you can stop and talk to other snowmobilers. There's probably not a more approachable group on the face of the earth. You can go anywhere and walk into a room and if there are other snowmobilers there you're going to know it pretty soon.

Members of clubs understand the benefits of membership. What I mean about that is that, for example, when our local snowmobile club really began to get organized about seven or eight years ago, I wasn't really sold on the benefits of organized snowmobiling myself. I was one of those who sort of felt that, you know, "I've been riding here for a long time. Why should I have to join a club, and why should I have to get permit, etc?" I can tell you, though, that after having sampled the product, I was soon a very firm believer. It certainly added a new dimension to me personally, as a snowmobiler. No longer were there days where 70 miles was a really big day and you got up the next morning and you felt like you'd been beaten half to death. So there's certainly that aspect of it. I think that generally the members who support snowmobile clubs all have the same sort of feeling, that membership certainly is worth the cost.

Snowmobiling is successful because it's definitely a grassroots organization. In fact, the snowmobile clubs themselves and the organizations involved in snowmobiling have a really good public rapport. The general public definitely supports our club in our own area, and I know they do also in other areas. The sport is definitely dependent on volunteers. This is self-evident. However, I think this is a strength. It's the volunteers, their flexibility, their hard work, their drive that make this such a positive aspect of snowmobiling and what makes it so successful.

The OFSC certainly has had 33 years now of positive experience to build from, and the clubs in the OFSC have good working relationships with a lot of the other partners, certainly other clubs, municipal and provincial

governments and other user groups. I can give you an example. We had a meeting in fact in this very hotel just this morning with a group of municipal leaders, private business owners, the snowmobile club and members of the OFSC, where we talked about the possibility of using Timmins and the surrounding area as a pilot project for some new safety and signage initiatives that we're wishing to undertake. To see all those various groups come together and working towards a common goal is something that doesn't happen every day in today's business world.

What are the benefits of mandatory trail permits? It would obviously create a more equitable distribution of financial burden—no more freeloaders out on the trails. It would provide the providers of the product, the snowmobile clubs and the OFSC, a stable budgeting platform. Your budget year to year wouldn't necessarily be linked to permit sales that might very widely depend upon the whims of the public, "Oh, Jeez, it really hasn't snowed a whole lot yet so I think I'm going to wait." In a lot of cases people just don't end up buying them at all.

I believe it would clear up a number of grey areas in regard to liability and legal responsibilities for the various partners involved in the trails.

Time and money now spent trying to convince non-supporters could be better spent improving trails, signage etc. Our club volunteers spend an awful lot of time promoting the public relations aspects of buying a permit and the fact that it is voluntary but it's for the good of all, and that people really have to support the voluntary user-pay system.

The ability to enforce the already existing premise of OFSC permits mandatory on OFSC trails: I believe that a mandatory trail permit system could put some more teeth into that premise. "Mandatory" is mandatory, and the issues around whether the trail crosses public land versus private land etc could possibly be eliminated. I know that's part of what the bill tries to address.

What are my suggestions for improvements to Bill 101? First and foremost, leave the permit administration and control to the OFSC and member clubs. This is important, I believe, for the following key reasons.

The very largest one, as far as I'm concerned, is the perception of the volunteers. There's no doubt that this sport and this industry was built on the backs of the volunteers. I'm not so certain that increased government control in this regard would necessarily be of benefit when it comes time to getting volunteers to help in the organization. I know for myself as a volunteer, I've been out there with a chainsaw cutting trail and hanging signs. If I were to think there was a ministry of snowmobiling out there I'd be a heck of a lot less inclined to help. My attitude then would be, "It's not my problem any more. I pay my taxes; let somebody else look after it."

Certainly our private landowners are much more amenable to agreements with the local snowmobile clubs. In many cases these are their friends and neighbours, people they've worked with for a number of years.



Again, increased government control of that particular area would lead many private landowners to rethink their land use agreements.

The OFSC has an excellent track record. They've got 33 years of success to speak to.

There's generally a mood in government today, and certainly in the public taxpayer's mind, that we should decrease and not increase bureaucracy.

There would be no net increase to MOT operating costs, I feel, if the administration and control of the permits were left to the OFSC and the member clubs. I'm not saying there wouldn't be any increase whatsoever, but we wouldn't be talking the possible large increases we could be talking about if MOT took that all over.

Leave it to the experts. These people know what they're doing. They build the trails, they sign the trails, they live this.

There are several other privatization models or co-operative agreements that exist; for example, the OTMP, the Ontario Tourism Marketing Partnership that I'm familiar with, real estate boards etc.

How can the Ontario government and Bill 101 best help organized snowmobiling? Let snowmobilers control their own destiny. Provide the OFSC and organized snowmobiling with the required legislation to enforce the mandatory permit model. Let these people continue to try and do what they've been trying to do for a number of years now, but give them the means to do it.

1500

"Mandatory" must be mandatory. I mentioned this a little earlier, but this must include all trails under the control and maintenance of the OFSC and the member clubs regardless of whether or not they cross public, private or other land.

Aid the OFSC in recognition and identification of traditional users. This is a big issue that's been up for discussion and I know that the OFSC is very open to those discussions. There is probably a role that government can play in bringing those two parties together.

Finally, the old adage, "If something isn't broke, don't fix it." It must be recognized that Bill 101 is the result of a request from the OFSC to help them better manage a valuable resource. The hard work of the task force led by Mr Spina, certainly a friend of snowmobiling, is respectfully acknowledged by all in organized snowmobiling and snowmobile tourism. There is no doubt that the bill we're presently debating was a result of a request from the OFSC. I'm just not sure it's something they wholly endorse in its present form. It must be recognized by the government that this request for aid in further developing an already successful model cannot come at the expense of dismantling what is already in place. Basically, let's all take a system that is working well and make it work better. I believe that with this government's support the OFSC can continue to do its fine work and can continue to provide me, as a tourism marketer, with the superior product that I need to take out to the consumer.

I thank you, Mr Chair and committee, and I'm willing to entertain any questions you may have.

**The Chair:** Thank you, Mr Saari. This time the questioning will start with the government.

**Mr O'Toole:** Thank you very much, Will. I see that you're quite familiar with the impact on tourism, of course, in your role. As such, I'd just ask you some general governance questions that have come up. I think it's incumbent upon the government, the moment it says, "This is now the law," with this legislation—those who would like to hand it off to the OFSC would be wrong to think that there wasn't a role for government, because eventually dispute resolutions and other kinds of legalistic challenges would fall on the government to solve, to try to find that balance.

I'm interested in the whole role of the revenue. For instance, we're marketing Ontario to our friends in the northern states. Do you think the government of Ontario has a role in funding as a core partner in some way? As you say, if you have a bad year, the revenue on permits would be down. They may have already taken a loan to buy a new groomer for the trail. The relationship part of it gets a little more complicated. How distanced should the government be?

**Mr Saari:** I certainly agree with your first point: we'd be burying our heads in the sand. I don't speak on behalf of the OFSC, but in my own opinion the government simply can't hand total control over. However, there would be some type of formal mechanism, an MOU, if you will, or some type of committee that could be struck as an industry committee that could work through those problems, as you've pointed out, when they do arise.

Secondly, yes; I didn't address it because I understand that a number of various options were looked at by Mr Spina's task force as far as the possibility of other streams of revenue to support snowmobiling. I know there are other jurisdictions that have been looked at—Vermont, Minnesota, Michigan, Quebec etc—where there are other revenue streams. Personally I find a number of them very intriguing. In particular, there are some US states that look at the issue of gas taxes, particularly for premium gasoline because it's very well known that the majority of snow machines these days burn primarily premium gas. From our own experience here in town, we've got local gasoline retailers telling us that on any given Saturday in the wintertime in snowmobile season they sell more premium gas in one day than they might sell in any one month at any other time of the year. I didn't address those because I was under the impression that as the bill stands that wasn't part of it, but I would like to see that explored more, yes.

**Mr O'Toole:** The other part is the whole enforcement component. As you know, grooming the trails is one part, but enforcing the whole aspect is problematic. I think you raise a very good point on the role of the volunteer. If this becomes kind of, "Let the government do it," then everybody will just sit. As someone said today, too much help is a bad thing. They'll sit in their La-Z-Boys. Could you comment on that?

We're really trying to find the balance. We can't, on the one hand, be putting it in the glossy brochures and, on



the other hand, be completely absolved of any responsibility. You're trying to say, "How much autonomy of these volunteers and adventurous types can you find?" Working in the tourism marketing area, I'm sure you see that balance just as clearly as you describe this hotel.

**Mr Saari:** I think that from an enforcement issue, there are some things already in place that could aid in that. Certainly, the volunteer STOP officer program could be expanded. Not speaking on behalf of the OFSC but on behalf of myself, I think that's already a very good model, where provincial enforcement agencies and the volunteers are working hand in hand, and certainly I think that could be expanded. Again, to the volunteers as an issue, there's no doubt that funding such as Sno-TRAC etc certainly helped, but in many cases it also provided additional burdens. Again, it's the large volunteer force that traditionally is inherent in a snowmobile club that makes the trail system successful.

From a personal perspective, I remember one weekend when six of us went out with chainsaws and literally cut a mile and a half of trail through the bush. We practically killed ourselves doing it, and at the end of the day we were able to sit down, look back and say, "Wow, what a job." Every time I ride that piece of trail I think about that, and every time I bring through a visiting journalist or someone from out of the territory, I have to stop and say: "Do you know what? We did this." I'm not so certain, if I felt Big Brother, if you will, was sort of controlling things, that I would be amenable to putting in that type of sweat equity.

It is definitely a very serious concern, realizing that volunteers in many clubs are facing burnout. They do have other lives to live, besides administering and looking after snowmobile trails. What's the answer? I don't know. But I think the perception is definitely that volunteerism could suffer as a result of some areas of Bill 101.

**Mr Ramsay:** Thank you very much for your presentation. I think it was a very good summary of a lot of what we've heard. You've put it all in one place for us and it's very accessible.

I think your observation is right. Here we have a private sector group that has actually come to government for some help, and rightfully so. I think government has sort of stepped up to the plate and offered not only to help but could even take over some things. I think they've gone a little too far in this legislation. We're only at the first reading stage; it is very unusual to come out. This is really like a first cut at it, to be fair to the government. Coming around at this early stage gives us the opportunity to really take a look at this.

You're right: I think you need help, but we shouldn't help too much. You still need that volunteerism there, but

we've got to find the right balance so that everybody is still pitching in but we don't burn people out.

I have a question about the benefits. You say one of them is to "Clear up 'grey areas' in regards to liability and legal responsibilities of partners." What do you mean by that?

**Mr Saari:** I'm certainly not a legal expert, but from a municipal standpoint, for example, there are areas of snowmobile trails, certainly in the city of Timmins, the largest city in area in Canada—a little plug there—a number of the trails do cover municipal property. I'm thinking more there of the issue of non-permit buyers on OFSC trails that cross private property, whether it be municipal or other, and what the issues are, should a mishap occur or there be some type of damage.

Not being an expert, from what I understand of it that issue has been successfully dealt with by the OFSC in a number of other instances. But what it basically comes down to is that if everybody on that trail had a permit, then they'd certainly be covered under the existing insurance policies etc that are inherent in being an OFSC club member.

**The Chair:** Thank you, Mr Saari. We appreciate your bringing the perspectives. It is very fitting that you are our last presenter today as we sit here in a facility barely a year old that I am told is already contemplating a 100% expansion. I'm glad to hear the economy is booming up here in Timmins. Thank you for the perspective you've brought to us here today.

**Mr Saari:** Thank you, Mr Chair. I hope you enjoy the rest of your visit in Timmins.

**The Chair:** Thank you.

**Mr Ramsay:** Are the buffalo going to lose their habitat? I'm concerned.

**The Chair:** You don't have to feel any concern, Mr Ramsay. The world is in good hands.

**Mr Ramsay:** OK. Thank you.

**The Chair:** For anyone who cares to continue to make comments—Mr Ramsay alluded to it just a few minutes ago—this is somewhat unique in that it's only about the fourth bill we've taken on the road after first reading. The results of those previous three or four bills have been extraordinarily positive. There has been far greater co-operation, not just in the legislative setting but outside.

I want everyone to know we are really dealing with a pretty clean slate here, so if you have any further comments or thoughts, we would welcome them at any time. You can send them to Mr Kaczowski or Mr Spina.

We thank everyone who has taken the time to make a presentation or come as a visitor here today. This committee stands recessed until next Tuesday in Bala.

*The committee adjourned at 1512.*





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**Legislative Assembly  
of Ontario**

First Session, 37<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Première session, 37<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Tuesday 5 September 2000**

**Journal  
des débats  
(Hansard)**

**Mardi 5 septembre 2000**

**Standing committee on  
general government**

**Motorized Snow Vehicles  
Amendment Act, 2000**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2000 modifiant  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Tuesday 5 September 2000

Mardi 5 septembre 2000

*The committee met at 1033 in the Cranberry Marsh Cove Resort, Bala.*

MOTORIZED SNOW VEHICLES  
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI  
SUR LES MOTONEIGES

Consideration of Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement / Projet de loi 101, Loi visant à favoriser la durabilité des pistes de motoneige et à accroître la sécurité et les mesures d'exécution.

**The Chair (Mr Steve Gilchrist):** I'd like to call the committee hearings to order. It is our fourth day of hearings on Bill 101, the Motorized Snow Vehicles Amendment Act, 2000. Greetings to members joining the committee for the first time here today.

## MUSKOKA SNO-BOMBERS

**The Chair:** I am told that our first presenters, the Muskoka Sno-Bombers, are here. I ask a representative to come forward to the witness table, please. Good morning and welcome to the committee. We have 20 minutes for your presentation.

**Mr Jeff Durant:** Good morning. My name is Jeff Durant. I am the current president of the Muskoka Sno-Bombers, the local club out of Bracebridge, Ontario, which is approximately 20 minutes east of where we sit.

I'd like to thank the committee for this opportunity to speak on behalf of Bill 101. The Sno-Bombers' general feeling is that we support it. We have a couple of issues we'd like to put forth, but mandatory permits are something we feel are required in this volunteer organization called snowmobiling.

I moved to Bracebridge about 11 years ago, and at that point in time snowmobiling in Bracebridge and Muskoka was well underway. There was a spaghetti network of trails. It existed well and existed solely on the backs of volunteers.

Over the last decade in particular, the sport of snowmobiling has evolved at a tremendous rate. Years ago, the thought of individual clubs across the province joining their trails was not something that was an issue. If one club's trails happened to come close to another and they connected, great. But at that stage of the game the

snowmobile trails were created by volunteers for that club, for those club members to use—small group, small organization, easy to handle.

Today, on the other hand, the world of snowmobiling has changed dramatically. The sport has huge economic impacts on local communities and businesses, specifically those communities which are snowbound. In Muskoka we are within a relatively short drive of the GTA. In your travels getting here, I would suspect you've been able to see the huge number of cottages around the lakes. Crown land is something we don't have much of, good or bad. We've also had a significant increase in the number of resorts, and the number of resorts which are now open year-round or certainly seasonally, winter and summer.

Having said all this, what's my point with respect to Bill 101? The Muskoka Sno-Bombers exist solely because of volunteers. The board of directors is all volunteer; most of the labour on the trails is volunteer. We've progressed to the state that, due to the large influx of traffic and snowmobilers, we now have to have paid groomer operators. What that does for the club is that we can dictate when these operators go out, that specifically being in the evening, at night. When the daytime traffic is busy, night-time people are at home sleeping.

The Muskoka snowmobile club is able to pay groomer operators as a result of a budgeting process that has developed over the years. As a result, the revenue is directly from permit sales. The Muskoka Sno-Bombers club sends representatives every year to the Ontario Federation of Snowmobile Clubs' annual general meeting. At this meeting several things occur within the sport of snowmobiling. First of all, we recognize funding shortfalls that exist throughout the province. We, being the snowmobile club, and specifically the Sno-Bombers, have an opportunity to vote on trail permit price-setting. This ability allows us to set the permit price accordingly, because the permit price is being set by people who know what the sport is about, by people who know what the funding requirements are. There is no profit consideration taken into account anywhere.

I mentioned a couple of sentences ago that one of the greatest obstacles we face as a snowmobile club is underfunding. All the projects that should be, that need to be or that we wish to have done in order to improve the snowmobile trails throughout the region and throughout our club network require large dollars as far as capital—things like blasting rock: there's a bit of rock around



Muskoka and it's tough to climb over; poses groomer problems; can't get groomers over it. At the end of the day, with all of this capital funding required, the net result is an improved snowmobile trail providing safer riding conditions.

1040

The Muskoka Sno-Bombers, on the other hand, are able through budgeting to cover operation expenses: fuel, oil and groomer wages, as we talked about. What I haven't mentioned is all of the volunteer hours that are included in this sport and that the Muskoka Sno-Bombers put out. We pay groomer operators, but on Saturdays and Sundays and whenever possible there are people who go out for the good of the sport, because they recognize that it's a volunteer-driven organization with no other outside influence, who are willing to spend hours brushing trees and on general trail work. When we send a volunteer out on the trail today, they recognize that what they are doing is no longer just solely for the purpose of the club; they are doing it for the good of the local club, they are doing it for the good of the region, and in whole they are doing it for the good of the whole sport of snowmobiling, specifically in the province of Ontario.

The Sno-Bombers have a fair number of private landowners who graciously provide permission to use their property. They understand that within the sport we are out doing our own thing, volunteering, and they essentially agree to volunteer the use of their land. Having said this, the sno-bombers strongly feel that the Ontario Federation of Snowmobile Clubs must have final say in such things as permit fee, permit distribution and budgeting. The Muskoka Sno-Bombers support the OFSC and their request to the government for support in the form of mandatory permits. This OFSC autonomy must remain.

A fear that exists is that government intervention setting trail permit fees or creating new regulations on how revenue derived from the sale of permits can be spent would have a negative impact on volunteers. The question would be, why is a volunteer working for a government organization? The other issue we fear would be a private landowner saying, "Why am I allowing the government to pass across my land for free?" The potential there would be that if the permission is denied, the trail network, as we know, could drastically change.

Mandatory permit legislation for snowmobiles on OFSC trails provides the necessary teeth enforcement agencies need, and we wholeheartedly support that.

It is not the place of the Muskoka Sno-Bombers to discuss traditional trail users, but we recognize the fact that there are and that the OFSC will address that in our best interests.

In Bracebridge we don't have a heck of a lot of crown land. We really have nothing to say with respect to the crown land issue, other than that once again we support the OFSC and their initiatives in that access must be addressed.

The Sno-Bombers ask that the committee allow for the OFSC to have final authority on all matters regarding OFSC trail permits, distribution and pricing. Thank you.

**The Chair:** Thank you very much, Mr Durant. That leaves us time for questioning. We've got only two parties present so we'll split the time between the Liberals and the government. We'll start with Mr Levac.

**Mr Dave Levac (Brant):** Mr Durant, just a simple question in terms of the permit fee: is there any rate that the OFSC has come up with? The amount of money is basically what I'm talking about.

**Mr Durant:** Yes. This year the permit fee is \$120. That was derived at based on a budgeting process. When I say the OFSC, it's all 281 clubs at the general meeting saying, "Yes, we need this, we need this." Capital project requests are submitted by clubs to various committees, and all of this gets laid out and we say, "Jeez, we need \$42 million and if we sell 110,000 permits at \$120 we only have this much."

**Mr Levac:** So, in essence, from the grassroots they give that information that's necessary to set the fee.

**Mr Durant:** That's correct.

**Mr Levac:** What you're requesting is that that continue.

**Mr Durant:** Yes.

**Mr Levac:** That brings me to the next question about policing. With mandatory permits, you'd have to have some type of policing to ensure that everyone on the trails is permitted?

**Mr Durant:** Yes. That exists now. I don't wish to speak to it at any great length. The OFSC has trained trail wardens, and that is the policing end of the permit in that the wardens can enforce the Trespass to Property Act, as well as the OPP. This just allows the OPP on the trail to issue a violation, a ticket, at that point in time rather than ending up in judicial court for the trespass act.

**Mr Levac:** What I'm hearing is that you've created kind of your own dedicated tax, if that's a fair term to use. If you're going to pay for your permits, that money goes directly back into the trail.

**Mr Durant:** That's correct; it's user pay.

**Mr Levac:** Would you see any value in assisting in bringing that down by maybe applying a gas tax? Not introducing a gas tax, but having some of the money that's coming from the gas tax presently dedicated to the trails. You're filling your snowmobiles up with gas, I presume.

**Mr Durant:** My own personal thought would be yes, but not knowing exactly how the processes work.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** Thank you, Mr Durant. I recognize the importance of the volunteer effort through your organization. I know in years gone by there always was a problem with drinking and snowmobiling and there's evidence of a number of fatalities that can be attributed to driving under the influence or at night. I'm in the south, and down my way oftentimes people don't realize there's an old fence coming out of a snowdrift, and there have been cases of decapitation and things like that. Through the volunteer effort, how successful have we been in trying to deal with some of those problems, the reckless snowmobiling and



the drinking? There have been a number of information programs.

**Mr Durant:** I'm not terribly comfortable in responding to it in that my response might be taken in the wrong context. I would simply say that we come from a volunteer standpoint. There is the Snowmobile Trail Officer Patrol program, which is a volunteer program in partnership with the OPP. Again, they're enforcing the Motorized Snow Vehicles Act typically on OFSC trails. As far as running through a farm which is not a designated OFSC trail, hitting fences as you allude to—

**Mr Barrett:** I was just using that as an example of some of the problems. Through your organization, do you have literature or pamphlets available to try and convince people it's not a good idea, in those cases where they might take a bottle with them—

**Mr Durant:** The head office of the Ontario Federation of Snowmobile Clubs does, and they're made available to the clubs.

1050

**Mr John Hastings (Etobicoke North):** Thank you, Mr Durant, for coming today. I'll get right to the heart of the matter regarding your submission, which I find most intriguing. On the one hand you support the federation with respect to requiring that this authority and the permitting and the fees be mandatory, but on the other hand, in the middle of page 2, mid-paragraph roughly, you also ascribe your fears to direct governmental intervention in terms of MTO or whatever ministry would end up having the responsibility or authority for issuing the permits and setting sundry regulations.

Do you see the direct contradiction in your own position? On the one hand you're arguing for the necessity of mandatory fees, which I can see, because of all the good work that's done by many of the players in this particular recreational industry, and yet you don't want any more governmental regulation with the setting of the fees or whatever ministry would have some kind of specific assertive influence in this area. How do you square them?

**Mr Durant:** I would put that down to my inability to explain myself perhaps as clearly as I should. My fear is the mandatory permit—the legislation part, there's no fear with that.

**Mr Hastings:** Why not?

**Mr Durant:** I have no problem with—

**Mr Hastings:** That's intervention.

**Mr Durant:** It's intervention from an enforcement standpoint. The intervention I have a fear with is it now says "province of Ontario" on the permit, or might it say "Ministry of Transportation" or whatever the case may be, and the OFSC is pushed out of the way.

**Mr Hastings:** OK. Given that inclination that you have, then, if you got most of what you wanted in your brief in the broad thrust of this bill, in your estimation, how would there be accountability to the taxpayer supposedly in terms of the federation having pretty well a self-managed operation for price setting, fee setting, issuance of those permits etc?

**Mr Durant:** When you say "taxpayer"—

**Mr Hastings:** Everybody is a taxpayer.

**Mr Durant:** Everybody is a taxpayer, and in this case it's a user-pay sport, so if my neighbour chooses not to, there's no cost associated to him from the standpoint that the snowmobile club, Muskoka Sno-Bombers, still is taking care of permit distribution; the various outlets within Bracebridge would still sell a permit as opposed to a driver's vehicle office having to do that, so they could basically alleviate any taxpayer fears in that there would be no government requirement.

**Mr Hastings:** I won't go down that road any further, but I'll go back to another—

**The Chair:** Sorry, Mr Hastings, we're over time.

Thank you very much, Mr Durant. We appreciate your taking the time to come before us here today.

## MUSKOKA SNOWMOBILE REGION

**The Chair:** Our next presentation is Muskoka Snowmobile Region. Mr Shaughnessy, I take it? Good morning and welcome to the committee.

**Mr Paul Shaughnessy:** Good morning. Welcome to Muskoka. My name is Paul Shaughnessy. I'm the general manager of the Muskoka Snowmobile Region.

First, a few words about myself. I've been a snowmobiler since I was a child; in fact, probably at an age that today would be considered illegal. I've been involved in organized snowmobiling since the late 1980s as a volunteer with a club, as a volunteer trail warden for the past 12 years, and for the past four seasons I've been a volunteer special constable with the STOP program. I'm also employed, through organized snowmobiling, as I said, as the general manager of the MSR.

Perhaps a little explanation as to why we are here today. We, the MSR, support Bill 101 and certainly the actions to enhance safety, enforcement and the sustainability of snowmobiling. However, whereas sustainability will be achieved through mandatory trail permits, we are concerned with the implementation and management of this program. To be specific, our concern is with the role, or lack of, that snowmobile clubs and the OFSC have in the sustainability portion of this act.

A little bit of information on the MSR, the Muskoka Snowmobile Region: we're an association of nine member snowmobile clubs located primarily across the district of Muskoka, some portions of Parry Sound district and portions of Haliburton and Simcoe counties. Many of our member clubs are among the oldest clubs in the province of Ontario, with some tracing their origins back to the early 1960s. In our early years, snowmobiling amounted to nothing more than a group of local enthusiasts heading out for the enjoyment of their family members. This was an era where Muskoka literally closed down after Labour Day—we'd be shut today—as employees were laid off and businesses either shut down or operated with a skeleton staff through the winter months, and I can attest to that fact personally. Today, snowmobiling is an essential component of Muskoka's winter economy, bringing to the region the benefits of 12-month employment. Just



under 10,000 snowmobilers purchase trail permits from our member clubs, our association, and thousands more come to experience our 1,300 kilometres of scenic trails.

Snowmobiling in Ontario is primarily funded through a user-pay system and mandatory trail permits will surely provide us with much-needed funding assistance. We must however recognize that our past and future success is dependent on a number of factors, not just the revenue from trail permits. No amount of permit revenue could replace the support from our volunteers, our area businesses, the private landowners, and our community leaders. These community-spirited individuals are, and must continue to be, the foundation of organized snowmobiling. For Muskoka and other communities throughout Ontario, winter tourism is dependent on the generosity and support of these individuals.

The combination of volunteer and community support, together with the user-pay system, has been the backbone of organized snowmobiling in Ontario for over three decades. We must take this point into consideration when making any changes to our funding structure.

The demands on our clubs and our fragile volunteer base are ever increasing. The 1990s brought with it the era of the touring snowmobiler: tourists with their wallets and saddlebags travelling from one destination to another. With touring snowmobiling came traffic volume never before witnessed in many parts of Ontario. Snowmobiling has never been more popular. Yet, despite the increased popularity, our volunteers are managing trail networks with limited resources. While mandatory trail permits should help alleviate part of this funding shortfall, as previously noted, snowmobiling will still be dependent on volunteers and the local community.

With respect to enforcement of mandatory trail permits, our economic survival must include all recreational snowmobilers paying their fair share. We stress "recreational snowmobilers," not legitimate hunters, anglers or those earning their livelihood.

The snowmobile community is very well connected, thus information travels quickly. As a volunteer special constable working for the provincial STOP program, I can attest to this fact. In areas with a visible police presence, word gets out quickly and snowmobilers tend to be more compliant with the law as they realize that if they're not operating legally, chances are very good that they will get caught.

If enforcement of a mandatory trail permit is lacking, this information will also spread quickly throughout the snowmobile community and many snowmobilers will avoid purchasing a trail permit. This is why the enforcement of mandatory trail permits must include the support of OFSC volunteers. Ontario is a very large province, and with just under 50,000 kilometres of snowmobile trails, it would be impossible for traditional law enforcement agencies to patrol these trails without some form of assistance. The industry's economic survival is dependent on the user-pay system, and full enforcement must be an integral component of this program.

Bill 101 has the makings of a true partnership, a partnership between the provincial government and the

volunteers of organized snowmobiling. As with any partnership, all parties must feel that they are being treated fairly.

While the OFSC must respect that there are certain areas of Bill 101 that require government control or involvement, the provincial government must respect the OFSC's experience and success at developing a vibrant winter recreational activity for the past three decades. Should the clubs and their volunteers feel or fear that they have lost or are about to lose their autonomy or financial security, this will be the beginning of our demise. Should the volunteers feel that the OFSC is nothing more than an arm or extension of the government, volunteer and community support will gradually diminish.

1100

In conclusion, we recognize that Bill 101 contains a number of actions designed to enhance safety and enforcement. We recognize that mandatory trail permits will help sustain organized snowmobiling in Ontario. However, the bill as presented does not spell out the OFSC's role in protecting our sustainability. We ask that Bill 101 and any corresponding regulations must respect the Ontario Federation of Snowmobile Clubs' autonomy, our financial security and our role in building and maintaining organized snowmobiling in Ontario.

**The Chair:** We have time for some questions. We'll start with Mr Spina.

**Mr Joseph Spina (Brampton Centre):** Thanks, Paul, for coming this morning. I apologize to everybody; I didn't plan for construction on Highway 9 when I left home. In any case, a good presentation.

I have a couple of questions. The institution or implementation of a mandatory trail permit you indicate has perhaps some concerns from your perspective, one being the loss of autonomy of the OFSC and its current role in organized snowmobiling. The other is the difficulty in enforcing these permits; you make a comment here, "without some form of assistance." I'm asking if you could explain that a little bit and then I want to go back to the first part of my question.

**Mr Shaughnessy:** With respect to the second part of the question, enforcement, we have proven—and when I say "we," I mean all the OFSC member clubs—that we have been able to deal with enforcement of an OFSC trail permit. There is expertise out there. Perhaps it might need some modification or some improvement or enhancement, but we have over the last three decades been able to enforce a user-pay trail permit system. If we go to a mandatory trail permit in Ontario, if we're going to take that action and purely put it into the hands of the traditional law enforcement agencies, we really question the ability of those organizations to enforce mandatory trail permits without some form of assistance. I think you will find that if there's OFSC involvement in the trail permit, you will also find corresponding volunteer support from the OFSC with respect to enforcement.

**Mr Spina:** Good. On the early part of the question that I had talked about: you mentioned that the revenue



from mandatory trail permits would help or give some assistance to the sustainability of the system. There were some recommendations made over the consultation period, in the early discussion papers, that were to gain some general feedback from the public leading up to a more formal public hearing like this. Are there alternatives that you think might be better or as good as or that maybe would even add additional assistance to the sustainability of the system?

**Mr Shaughnessy:** There are other alternatives. Perhaps the gas tax or a rebate from that was mentioned with the previous speaker, but first and foremost we must ensure that all recreational users of that trail network are paying their fair share. That's the basis of any user-pay system. We recognize that today there are true recreational snowmobilers who are abusing the system. If we get past the first hurdle with mandatory trail permits, then we can look at other alternatives in the future.

**Mr Spina:** A quick one: the matrix, which is an internal description, is basically the equalization formula of redistribution of some of the funds from the federation to some of the lesser-funded or poorer clubs, for lack of a better way to describe it, from some of the wealthier clubs. How do you feel about that?

**Mr Shaughnessy:** The OFSC has years of experience with respect to club expenses. There are data every year; clubs have an annual financial report that they turn in to the OFSC. Those data are there. The OFSC has the ability of assessing clubs' needs. That's why we say it's so important that the OFSC be involved in this revenue, both raising the funds and distributing the funds. It's so important that they be involved because they have that expertise. They know which portions of the province have different weather trends or have different traffic volumes and so on and so forth. They are able to make that assessment based on the experience they have. We're fearful that if that's removed from the equation, we may find that we're going to have areas that are going to have even more significant shortfalls than we already have. So we're very cautious with respect to that issue.

**Mr Spina:** Thanks, Paul. I appreciate it.

**Mr Levac:** Mr Shaughnessy, just a clarification for my own use. I'm not a snowmobiler and I don't know these things very much, but I've been trying to do some reading on it. Are trail wardens sworn officers?

**Mr Shaughnessy:** No. Trail wardens are trained volunteers. It's an internal program of the OFSC, as opposed to a STOP officer, who is an actual special constable, a sworn officer.

**Mr Levac:** That answers my next question about STOP. Generally speaking, who presently gets the revenue from the permits? Is it the club itself or is it the OFSC that distributes it?

**Mr Shaughnessy:** We have a tiered system whereby a percentage goes back to the OFSC to cover fixed costs that they have to deal with and then the majority of the permit revenue stays with the selling club.

**Mr Levac:** Have you found a problem with—I'll give you a scenario: club A in southern Ontario sells volumes

of permits and clubs B and C, which happen to be up north, maybe do not sell as many permits. I think Mr Spina was making reference to the distribution. Would this mandatory permit cause an imbalance between north, south, east and west or rich and poor clubs?

**Mr Shaughnessy:** As I stated to Mr Spina, the OFSC has years of experience with respect to that. Certainly as the sport has evolved, so have the requirements in various parts of the province. They recognize that organized snowmobiling is changing, that trends are changing, that where people travel has changed. They work with what Mr Spina referred to as a matrix. It's a formula that determines how much a particular club in an area would receive. That matrix will determine if a club is perhaps suffering from a funding shortfall, and then changes will be made. They will adjust the revenue in that area accordingly.

**Mr Levac:** A final question: from what I've heard around the table completely, there would be some advice provided to the government regarding the bill, making sure the expertise that is out there in terms of volunteers and even paid staff from the snowmobiling community would be invited to be a participant, and if not a participant, a leader, in how the distribution of the monies takes place.

**Mr Shaughnessy:** Yes. We certainly would like to see the OFSC in a leadership role.

**The Chair:** Thank you very much, Mr Shaughnessy. We certainly appreciate your coming here today.

#### NORTHERN ONTARIO TOURIST OUTFITTERS ASSOCIATION

**The Chair:** Our next presentation will be from the Northern Ontario Tourist Outfitters Association. Good morning and welcome to the committee.

**Mr Jim Antler:** My name is Jim Antler. I'm the research analyst for the Northern Ontario Tourist Outfitters Association, NOTOA for short. We're a non-profit organization that directly represents the interests of over 500 resource-based tourism businesses that are located primarily in northern Ontario. For your information, our membership is predominately made up of fishing and hunting camps and lodges, housekeeping cottage resorts, flying outpost businesses, air services, canoe and adventure travel outfitters, campgrounds, trailer parks and houseboat rental operations, so we have quite a wide swath.

Within our membership, and I'm sure the broader industry outside our membership, snowmobiling is becoming an increasingly popular tourism activity. Most of our members tend to be seasonal in nature, open May to October, although many have converted some or all of their business to handle snowmobiling clients in the winter, and many others are considering such a conversion, not only to expand their operating season but also to try and diversify the tourism products they offer.

From what I can understand, that expansion isn't equal throughout the north. I've heard comments that it seems



to be more developed in northeastern Ontario than perhaps in many areas of northwestern Ontario. I think this is important to highlight at least from the tourism perspective because Bill 101, and how it may ultimately come out at the end of the day, may encourage or potentially discourage efforts by operators to expand into the snowmobiling sector.

1110

When the Ontario Federation of Snowmobile Clubs passed a resolution last year to increase non-resident trail permit fees to \$300 per year, there was tremendous opposition from our membership. They were concerned, and knew, that such a fee would price Ontario out of the snowmobile market for most travelers. They were also aware that the OFSC was hoping to implement a mandatory trail permit system for its networks. While the reaction we got to the fee increase was universal in its opposition, there seemed to be a more mixed reaction to the concept of mandatory permits, but for those who were giving it some consideration, it appeared they had a concern that it would only be acceptable if there was a variety of permits available in terms of duration of time, that they were valid and at a reasonable cost. That's really where I want to focus my remarks today.

Subsection 2.1(1) of the bill adds a section which basically gives it power to introduce a mandatory trail permit. As I said above, there was mixed reaction to that within our membership when the discussion of this began last year. Our folks were very concerned that if that were to occur, we would need to have a variety of permit options and at a reasonable cost, especially for non-residents who, for many of our folks, are an important part of their snowmobiling business and the rest of their business in our industry. For example, once you get west of Thunder Bay, our lodges are almost 100% US clientele. Their marketplace for snowmobiling, should they choose to expand it, will predominantly come out of the United States.

While the bill doesn't address the specific types of permits or fees to be made available to the consumer—and we know that's usually done through regulation—we would like the committee to be aware of the importance of these factors to the overall impact of any legislation that may impose a mandatory trail permit system.

It's our understanding there are currently three types of OFSC trail permits available: you have a seasonal permit that costs either \$120 or \$150, depending on whether it's purchased before or after December 1; there's a seven-day permit, which I understand costs \$75; and a one-day permit which costs \$30. A concern is that the one-day permit seems to be priced out of line to the other two—and that has relevance to the rest of the presentation—because it seems like it's set at such a level that it would drive people to purchase a seven-day or a seasonal permit, depending upon the amount of time they want to travel. For example, the cost of three one-day permits would be more than a seven-day permit. We also understand, at least I've been told, that the OFSC has had some discussions about getting rid of the seven-day

permit or proposing that as an option. I don't think we would support that.

The bill gives the Minister of Transportation the power to set permit fees and conditions, and we recommend that strong consideration be given to maintaining two shorter-duration type permits and fees.

With specific regard to non-residents, they generally take a short-duration trip in Ontario, probably one to seven days. We want to have some options available for them to meet the needs of the travel they want to do in Ontario. Potentially having them need to buy a seasonal permit certainly won't, I don't think, be an encouragement to them to come into Ontario and may cause difficulty and perhaps serve as a discouragement for those folks. We must compete with other provinces and states for the snowmobiling dollar, especially from out of country.

In speaking with some of the staff, who I think have been involved in this legislation, in some ways they seemed a little unclear of even what happens in some of the other provinces. I understand there may be some things going on between different provinces and states in terms of reciprocal agreements, those kinds of things, and I was unsure whether or not there was a clear understanding of what those other competing jurisdictions have in place in their systems. We would want to make sure that before any system gets implemented, there would be a good study done of that, of the permit fees and the types in other provinces and jurisdictions so that Ontario, in dealing with the issue, can remain competitive.

Without knowing all the details of the trail permit cost to maintain, it is difficult for us to make recommendations of what those fees should be. I know that's not part of the bill, but I would like to make some suggestions and give you some things to chew on.

As I understand it, the seven-day permit fee has been set in the past to be one half the cost of the seasonal permit fee at the \$150 level, meaning a seven-day permit will cost \$75. We would suggest that fee be no more than half of that seasonal permit fee; in fact, we would want some consideration given to making it one half of the cost of what I would consider the early bird fee. The reason for that is that most non-residents who'd be coming into Ontario—and I'm going to speak a lot about non-residents because of the nature of the clientele, and there is a variety of other groups here who'll speak more on the resident side—are likely not going to travel in Ontario before December 1 anyway. To make their fee half of the latter cost, to me, for lack of a better word, may be a bit of a penalty to them. We would encourage that if there's a seven-day permit, and we would suggest there would be, it should be one half of the \$120 fee.

We also recommend that either the one-day permit, which exists, or potentially a three-day permit be implemented. We've given some suggestions to a cost factor of \$10 per day, as I say, without knowing the cost. People may want to make issue with that in terms of recouping the dollars that are needed to run the system. Clearly, something less than seven days would be important



because, as I say, you have many folks who may travel that one-to-three-day period and, regardless of which option they may want to look at—and we'd be happy to discuss that at a later point, maybe in the regulatory process—I think that \$10 a day would be a factor that could be applied there.

One advantage we can see to having a three-day permit certainly is that it means less paperwork, both to the issuer and to the permit purchaser, if they're going to travel more than one day.

We also recommend a continuation of resident and non-resident fees being the same. We acknowledge that the government at times will have differential fees for residents and non-residents, especially if you look at fishing and hunting in our industry, but we look at this one a little differently. In the fishing and hunting side of things, non-residents have the opportunity to consume and/or export a crown resource, and the crown has determined that they should pay a premium for that privilege, and we think that's fair. But a snowmobile permit simply allows for legal passage across a trail. It doesn't result in the consumption of a resource. It doesn't result in the export of a resource. That's why we suggest the system be maintained where resident and non-resident fees remain the same.

We also have to consider that people who snowmobile in Ontario for longer than a day at a time spend more money than just on permit fees. They spend it on accommodation certainly if they're staying more than a day, as well as gas, meals and so on, and permit fees are only a small portion of that overall economic impact of snowmobiling. Whatever we do, we need to make sure that we're going to encourage that type of other ancillary spending for the other businesses out there and generate new resident, and especially non-resident, dollars in our local economies through a reasonable and competitive permit system.

I've spent the bulk of my time on that because I think it's important for the committee to understand where our concern is, even though some of those things are more part of the regulatory process.

In terms of the sections that are recommended in the bill with respect to enhancing public safety, certainly we support the government's efforts in that regard. Public safety is an important component of this bill and the existing bill and the steps we see in here certainly don't cause us any difficulty in terms of trying to enhance that public safety.

Just to close, I want to thank the committee for giving us a chance to appear before you today. I'd like to suggest that our support for the bill is conditional in nature at this time, because we don't yet know what the permit and fee system is going to be. As I said before, I think there's a recognition in our industry that people could be willing to accept that type of mandatory system as long as the permits and the fees are reasonable for the industry. We hope you'll reflect upon that not only as you consider the bill, but in the subsequent regulatory process that will come out, should the bill ultimately be

proclaimed. If it does in the end get proclaimed with a mandatory trail permit system, we'd certainly welcome the opportunity to work with the government to create a permit system and a fee structure that would encourage growth and expansion in the sector and continue to grow this industry. So thank you.

1120

**The Chair:** Thank you very much, Mr Antler. That leaves us about eight minutes for questioning. We'll start with Mr Levac.

**Mr Levac:** Mr Antler, just a question regarding whom you represent and how that applies to this particular bill. You had indicated earlier that your organization represents the places where the tourists come to spend their time and effort and their money: campers, anglers, hunting camps. Did I hear you correctly?

**Mr Antler:** Yes, I was trying to give you an overall description of what our existing membership is, but primarily they are roofed-accommodation providers.

**Mr Levac:** And a lot of them are looking towards growing their industry with the understanding that they are getting more American tourists and more non-resident tourists coming in?

**Mr Antler:** Yes. As I said before, with the geography of northern Ontario being as broad as it is, certain parts of the province—the existing clientele that they have can really vary in terms of the percentage of non-resident guests. As I said, once you get west of Thunder Bay it can be almost 100%, whereas if you were on Lake Nipissing, near North Bay, where I'm from, some of those camps may be over 50% US, some may be less, and southern Ontario becomes a big market.

**Mr Levac:** Do you have any idea what per cent are recreational snowmobilers?

**Mr Antler:** For our industry, I would suggest that most of them would be. Those who have moved into the snowmobiling trade are probably catering to the touring kind of snowmobiler as opposed to the, I guess I've heard the term "angler" or "hunter" used, someone who's using a trail to get to point X to go fishing. That may occur in some cases, but I think it would be predominantly the touring side.

**Mr Levac:** So the fees for the permits seem to be the real stumbling block for your organization, because of what you've described as kind of discouraging use from outside, non-residential.

**Mr Antler:** Yes, the competitive factor that Ontario gets into because it'll compete with Quebec, it'll compete with Manitoba for a good chunk of that US market. When folks are trying to sell their products, they want to make sure—I believe, anyway—that a fee system, whether it's for this, whether it's for hunting and fishing licences, whatever, is competitive with what's out there in that marketplace, so in Ontario there's not something right off the bat that may serve to discourage folks.

**Mr Levac:** Have you co-operated with the OFSC in terms of expressing your concerns here, or are you doing that through this committee?



**Mr Antler:** We've had some relationship with them in the past. Last year, as I mentioned, was the issue of the non-resident fee, when they passed a resolution to effectively double that fee. Our organization had passed a resolution against that and we made that fairly clearly known to the OFSC, and in hindsight I believe they've pulled that resolution back off the table, in waiting to get through this issue of the mandatory permits.

So certainly they're aware of the concerns that we would have in terms of what that permit system or that fee system would look like.

**Mr Hastings:** Mr Antler, thank you for coming today. Would you describe how much your proposed fee would be, on a three-day proposed pass? I think you said it would be something like \$10 per permit, per user?

**Mr Antler:** Per day.

**Mr Hastings:** Per day.

Before you answer, \$10—if I recall, between our Canadian and the US dollar there's about a 30% discount. So if we had C\$10, you're really charging the American user from Minnesota or Wisconsin, or any of the Dakotas, if they come that far, about US\$6.50.

**Mr Antler:** Give or take, I guess.

**Mr Hastings:** Do you think you're a little low? I don't want, on the other hand, to end up seeing that you're gouging your potential customers. Isn't \$10 a little low, though, when you look at it from the American dollar viewpoint?

**Mr Antler:** As I said in prefacing that, certainly without knowing all the details of what it costs to run the system, we'd have to look at those kinds of things. But I think the point in using a number like \$10 a day seemed to me—I'll give you part of the rationale in terms of thinking about it: if you had a seven-day permit at \$60, which is another suggestion that I had thrown out, effectively if you worked it back to \$10 a day as a factor, what you would say is effectively somebody who took a seven-day permit would be able to travel seven days for the price of six. So to try and keep it somewhat in line with that—now, certainly there's room for discussion of those kinds of things. I wouldn't want to say it's hard and fast without knowing the system. But the concern would be that the current \$30 rate—I think that's too high and I've had the sense, and people have suggested to me, that it was set that way to try and drive people to buy other permits. Because if you're only going to be three days in the country, you might as well buy the seven-day permit because it's going to cost you less money.

**Mr Hastings:** Is your proposal for a three-day permit based on users coming into northwestern Ontario? That's what your member outfitters have asked in formal surveys, I suspect. Is that a large part of the business, the three-day, instead of longer?

**Mr Antler:** From what I can understand, and this is more anecdotal than hard and fast through surveys, certainly there are a lot of folks who seem to travel around that one- to three-day period. So as I suggested—I looked at either way on that. When the regulatory process comes down, you decide what you want to set for

a permit system. I think there would be room for some good discussion and debate as to what that period should be.

**Mr Hastings:** Thank you very much.

**Mr Spina:** Hi, Jim. Thanks for coming. We appreciate it. I gather that NOTOA is going through a talent search these days for an executive director.

Jim, one of the reasons that I think you're looking at a lower non-resident fee is a number of your members and outfitters in general include the permit fee as part of a package deal that they often offer for non-residents. Is that correct?

**Mr Antler:** I know that some people certainly would like to do that and have talked to me about the concept of—and I didn't bring it up, because it hasn't had a lot of discussion, from the comments I've seen in the industry—some way for an operator to be able to have a permit that they could include in a package, because it's part of where the industry is telling people to go in terms of packaging products. They'd like to be able to have that permit included in that. The logistics of whether they pre-buy it or whatever—I'm not sure how you'd work that out. But certainly, there has been some discussion about including it in the packages.

**Mr Spina:** I know in conversation with some of the outfitters, for example, along the north shore of Manitoulin, that when they offer a weekend package for winter ice fishing, or even a one-week package, when they included the rental of the machines, they often included the price of the permit for those sleds or, conversely, if the guests brought their own sleds, they would include the cost of the permits along with that package deal. Their concern was if it went too high—in particular, the originally proposed \$300 non-resident fee that was mentioned by you earlier, which was a good criticism—that certainly made it onerous and it was a disincentive to come here.

But in looking at other jurisdictions that you mentioned, I gather you haven't really done any research in that area as yet. Is that correct?

**Mr Antler:** I actually had a conversation with the fellow who runs the Manitoba Lodges and Outfitters Association to find out where their system works. He didn't indicate to me that they have a short-term permit, just a seasonal permit, but he believed that was in the neighbourhood of \$50 to \$55.

**Mr Spina:** But the fundamental difference is this: first of all, there are no two jurisdictions in North America that fund their snowmobile trail systems in the same way. In fact, if you look at jurisdictions where there is a very low user permit fee, ie, the state of Michigan, you find that about 95% of the trail system is owned, operated and run by the state, so the fee is basically a token fee that makes a small contribution towards the support of the trail system. In other words, it's a state-run system, as opposed to our system, which is probably at the other end of the scale, virtually 100% user-pay. Other jurisdictions are kind of in-between. I guess the Quebec system and perhaps the Vermont system are a combination of state-



funded or provincially funded portions together with user-pay.

I guess what I'm really trying to get at is, would you support a totally independent user-pay system, would you want a blend or would you prefer a totally state-run system?

1130

**Mr Antler:** Before I could give a clear answer on that, I'd want to see all the costs involved in the system and I'd want to know at the end of the day what that permit is going to be, in order to recoup whatever costs are going to be involved in the system.

As I said earlier, the ideas I've thrown out here are certainly open to discussion, maybe more to make a point about how we want to make sure that whatever comes out of the system is going to act as something that certainly won't dissuade people from travelling in Ontario or coming to Ontario from another state.

Hopefully it will encourage that, so the operators, in whatever way, can package it in the right kind of way that access to the permits and all those things is there. But I know that's a regulatory matter, as opposed to what we've got constructed in the bill in terms of how that's going to be laid out.

**The Chair:** Thank you, Mr Antler. We appreciate your coming forward and adding another element to the discussions we've had to date.

ONTARIO FEDERATION  
OF SNOWMOBILE CLUBS,  
SOUTHWESTERN REGION,  
DISTRICT 9

**The Chair:** We have had a cancellation in the 11:30 slot. Our next presentation will be the Ontario Federation of Snowmobile Clubs, southwestern region, district 9. Good morning, and welcome to the committee.

**Ms Pat Morrison:** Good morning. My name is Pat Morrison. I'm administrator for the South Grey Regional Snowmobile Association, which is located in Mount Forest, Ontario. I am here to represent all the clubs and associations within southwestern Ontario, which encompasses an area from Tobermory east to Meaford, south to Guelph, west to London and Lake Huron, all of which are members of the Ontario Federation of Snowmobile Clubs.

Beside me is John Berlett of Listowel, Ontario, who is the operations director for the clubs within this area. Both of us are avid snowmobilers, with extensive years of experience, both at a local club level and at a provincial level. In addition, both of us are private landowners who have snowmobile trails crossing our properties.

We are in agreement with a mandatory permit, as long as it is an OFSC mandatory permit, and that it be designated as an OFSC mandatory permit in the Motorized Snow Vehicles Act.

Our conception of an OFSC mandatory permit is:

1. That the administration, control and permit revenues relating to a mandatory permit remain with the

OFSC. The reason for this is that the brushing, the bridge-building and the regulated staking and signing that are needed to create the trails are all paid for by the OFSC member clubs. The cost of the expensive industrial grooming equipment and the maintenance and operation of this industrial grooming equipment is also totally paid for by the OFSC clubs. All of this is paid for with OFSC permit revenue, fundraising and volunteer donated time.

2. Such OFSC mandatory permit must be enforceable by police forces the same as the present yearly MTO validation sticker.

3. OFSC STOP officers and wardens must also have the authority to enforce an OFSC mandatory permit under the MSVA.

4. We fully understand the need for traditional users, as we have done in our area for a number of years in respect of our private landowners. We have designated a free, separate permit for our landowners, identifying them when they need to have access to our trails to travel to their other farms. The same could be done for trappers etc.

5. Such an OFSC mandatory permit would be required to ride OFSC designated trails.

I'll give you a bit of history on our district. Nine of the 10 clubs which formed the OFSC in 1967 originated from southern Ontario, and four of these were from our area. In 1967, when the OFSC was formed, there were already many individual clubs in existence in our area. Within three years many of these clubs had joined the OFSC and created the user-pay system, putting into place the foundation of our present-day OFSC trail system.

Presently, within district 9, we represent 32 clubs and associations which maintain approximately 4,000 kilometres of trail. They are all incorporated entities which sell close to 10,000 OFSC trail permits, which amounts to about 10% of the total provincial permit sales. From that permit revenue, we maintain the 4,000 kilometres of trail and we purchase, operate and maintain a fleet of 32 large industrial groomers. These large industrial groomers are needed to keep up with the ever-increasing amount of daily traffic on our trails. Many of our 32 clubs and associations have gone into debt by way of bank financing to purchase these large, industrial groomers, which cost in the range of \$100,000 to \$150,000 each. Many of these bank loans have been co-signed by volunteer individuals within the 32 clubs and associations.

We are quite proud of the fact that we have been able to manage our own financial needs with only our OFSC permit revenues up to this point in time. But with volunteer burnout this is becoming more and more difficult, and so an additional source of revenue is needed, such as an OFSC mandatory permit or perhaps revenue from the MTO validation sticker.

Due to our area's strategic location, our trail system receives a tremendous amount of daily snowmobile traffic. Our area is within close proximity to five major urban centres, one of which is the greater Toronto area. Many of these day trip snowmobilers like the fact that



our trail system is so easily accessible to them. Due to this recent rapid growth in the sport by this type of snowmobiler, local businesses are now doing a booming business during the winter, when otherwise they would lay off workers or just close down the business and go to Florida for the winter.

The clubs generate very little revenue from this type of snowmobiler. The day trip snowmobiler volunteers very little time, if any, to the development and maintenance of the trails in our district. They do, however, create a heavier burden upon our volunteers. Due to the increased workload and volunteer burnout, many of our 32 clubs and associations now have paid groomer operators in order to keep up with the ever-increasing demands of a world-class trail system. The rapid growth of this sport has also required that some of the clubs amalgamate in order to hire a paid administrator to look after the financial and year-round operation of the clubs' business.

The clubs depend upon their OFSC permit sale revenue and local fundraising, which involves volunteer-donated time, in order to maintain organized snowmobiling in our district. We have no outside funding from other sources, local or provincial. We agree that a mandatory permit would be an asset, but such a permit must be an OFSC mandatory permit, and under the sole administration and jurisdiction of the OFSC.

The security of the OFSC mandatory permit is needed to ensure that all aspects of the operation and maintenance of the present OFSC trail system are maintained. This will ensure that everyone who is riding the OFSC trail system will be paying their fair share.

I would now like to turn this presentation over to John Berlett to speak on behalf of landowners.

**Mr John Berlett:** Thanks very much, and thanks for allowing me to come today. I'd just like to give a little background. I'm sorry if I seem a little nervous. I'm more used to dealing with farmers with peaked hats and workboots and coveralls than I am with a bunch of guys with suits, but I'm sure we'll get through this.

**Mr Spina:** OK, John.

**The Chair:** There are at least two farmers here in suits.

**Mr Berlett:** OK, I'll just picture you with your hats on.

I'd just like to comment a little bit. I'm here today to speak on behalf of the landowner, mostly as a farmer, and I'd just like to make a comment on the previous speaker, Pat, if I'm allowed to.

A couple of years ago I was asked by the OFSC to represent the province of Ontario on Rendezvous Ride, that went across Canada; I managed to take two months out of my busy farm schedule. The price of permits across the 10 provinces varies very much on the trail quality. The higher the permit, the better the quality. I'd like you to keep that in mind. You can't have a \$10 trail permit and have a world-class system. You have to generate some revenue there. That's another issue, and I'm sure you will get through that.

1140

I currently farm about 2,000 acres of land in southwestern Ontario. My local club sets trails over many acres of this property. I am only one of many farmers in southwestern Ontario who allow snowmobile trails to cross their property.

As Pat said, our district maintains about 4,000 kilometres of snowmobile trails. You could say we maintain about 10% of the kilometres of trails in Ontario. One interesting thing is that the ratio of private landowners per kilometre of trail in southwestern Ontario runs at 1:1. So under our current system we have to go out as volunteer snowmobilers and deal with 4,000 private landowners.

The land use agreements with these 4000 landowners must be reviewed every year with the landowner to find out where they wish the snowmobile trail to be placed on their property. The current system that is in place works very well. What I mean by that is, in northern and central Ontario, a lot of it is bush trails and that type of thing, but there is an access trail. We have to go out and negotiate with the farmers every year to see where they want to put the trail, whether it's on this side of the property or that side of the property, or if there's a field we have to go around. As a volunteer from the club, there's constant contact with the landowners.

As a landowner, one of my concerns is that if the present system changes and the administration and control of the present OFSC trail permit is removed from the OFSC and its member clubs, what would happen under the present easement laws of Ontario? I have a fear that private landowners will lose control of their property. We've witnessed that in southern Ontario with the hydro corridors that have gone through in our area, and just recently the abandoned railway line issue. It's a real threat for a farmer when all of a sudden the railway is gone, there is access into my property, into some of my fields, and there's damage being done because of access by snowmobiles, ATVs, horseback and other groups of people.

Due to this fear of loss of control of our private property, many landowners may cease to grant permission for snowmobile trail access. In the past, we have given permission freely to local OFSC snowmobile clubs for their recreational use. We know the local people involved in these clubs and, in the rural way, we trust these people and their word is worth its weight in gold. At the present time, the landowners know that the OFSC and its member clubs provide protection to us through their policies and insurance coverage. Landowners place their complete trust in their local snowmobile club volunteers to protect their interests and look after the land that has been entrusted to them.

Southwestern Ontario is prime agricultural land. These snowmobile trails are only in existence in the winter. Permission is granted for these snowmobile trails only from December 1 to April 1 of each year, after which they revert to their original agricultural purpose.

Another fear I have as a landowner is that with government involvement with these trails, they could



become multi-use, year-round trails. This is not feasible in our area, due to large-cropping practices and livestock operations. Should multi-use, year-round trails become a reality, I can see the withdrawal of land use permission from private landowners.

In conclusion, as an avid snowmobiler I have the knowledge that approximately 80% of the permit buyers from our area do not snowmobile out of this area. It should also be noted that provincially, the majority of permit sales come from southern Ontario. If these permit buyers cannot ride trails close to home in the majority of the winter, chances are they will get out of the sport completely. Southern Ontario snowmobilers have stated that should it reach the point where the only snowmobile trails to ride are located in northern Ontario, many would quit the sport completely. It is just not feasible for them to travel a great distance all the time in order to enjoy their sport, both because of their work schedules and the lack of funds to do so.

As a local club volunteer, I know that should the OFSC and its member clubs lose control of the present user-pay system, in all aspects the reality is that we could lose control of our many dedicated volunteers who do everything from acquiring land use permissions to the actual brushing, signing and staking of the trails. I am finding that it is harder and harder to find local club volunteers, and that the present ones are reaching burnout, as some have been doing this for more than 30 years. I can definitely see many club volunteers stepping down, should they lose control of the destiny of the trail system they have worked so hard to build over the last 33 years. Quoting an old saying, "If it isn't broke, don't fix it."

In conclusion, I feel that the OFSC mandatory permit would be an asset, but such a permit should be in the sole responsibility and administration of the OFSC to ensure that organized snowmobiling continues in the province.

On behalf of the district 9 clubs and associations, Pat Morrison and myself, I thank you very much for giving us this time to address the issues surrounding Bill 101.

Are there any questions?

**The Chair:** Thank you very much. We've got about seven minutes. This time we'll start with the government benches. Mr Spina, you indicated you had a question.

**Mr Spina:** My colleagues also have questions. I just have a quick one, John. "If the system ain't broke, don't fix it." Tell me why I'm here.

**Mr Berlett:** We need more money. We'd like everyone to participate. If they're going to snowmobile, buy the permit and help us out that way. Southern Ontario—and I don't want to get into the politics of it—has not received any government funding from SST or Sno-TRAC or any of those things. We've always managed to do it on our own. This could be a helping hand, under the mandatory permit, as long as it stays within the OFSC.

**Mr Spina:** Pat, you added something here about the MTO validation sticker. Can you expound on that?

**Ms Morrison:** You have to have a validation sticker on your snowmobile every year. It's \$15 per year that's paid to the MTO.

**Mr Spina:** Does any of that money come back to the system?

**Ms Morrison:** Absolutely none, no. That was an alternative that we threw in, other than the mandatory sticker. We're just trying to get everyone to pay their fair share. We warden as best we can. There is the odd one out there that slips through the system, but rather than mandatory permits maybe something else you could be looking at is some of the funds generated from that.

**Mr Hastings:** Thank you for coming, people. There's a certain irony in what I'm hearing. On the one hand you would certainly appreciate getting a mandatory system, which would give you greater revenue, yet on the other hand a concern I have is how do we ensure specific benchmarks of accountability if you ended up with that kind of a system? I'd like to hear from you as to if you've got some of this, especially the mandatory approach price-setting, how does that arrest, if it does at all, the volunteer burnout? Do you see an inevitable trend towards sort of a professional grouping or more specialization, more professional stuff in this area and the lessening of the volunteer component over time because of the pace of change in our society? Lack of volunteerism doesn't just affect your organizations.

**Ms Morrison:** No.

**Mr Hastings:** It affects about everybody today. I'd like to hear from you in terms of those considerations.

**Mr Berlett:** Do you want me to speak on that?

**Ms Morrison:** I have some thoughts on it too, John.

**Mr Hastings:** So both of you, maybe.

**Ms Morrison:** One of my thoughts is that this ever-increasing push toward tourism is what's causing the problem of our volunteer burnout and requiring more professionalism. If we have the added revenue, we know we can produce that quality of world-class trails which is being broadcast worldwide with respect to Ontario. Now we've sat down with most of our clubs at the provincial level, and we've actually had to teach them how to fill out all their corporate papers and corporate tax returns and stuff like that so that things are being done the proper way and being filed so that there is some sort of a database there that can be followed.

**Mr Berlett:** Just speaking on that, it goes back to the revenue. As a volunteer, we've always asked them to go out, and their time is one thing, but the equipment is the other thing, because of the work involved in southern Ontario to set up the trails. It's completely gone come April 1, there are no visible signs of it, and all of a sudden, come December 1, it's there.

It's a tremendous amount of work for our volunteers to go out and put up all the stakes, all the signs. We grade all the ground, plow the ground. We were talking on the way up in the truck here; it costs me personally about \$1,000 a year to snowmobile. With more revenue, I'm sure we could pay some of those volunteers who are getting tired of doing it all for nothing—I hope.



**Mr Levac:** Mr Chairman, we could always legislate volunteerism. I couldn't resist, I'm sorry.

**The Chair:** You have us confused with the previous government.

**Mr Levac:** Oh, I see. I couldn't resist, John; sorry.

Thank you very much for your presentation. What I'm basically hearing is what we've heard from everybody presenting: there's a concern you're raising that the OFSC should maintain control of the finances that are there. The purpose of the permits is to continue to give you the funds that are necessary to make this industry grow.

Will the funds also address—and John was alluding to it—the option that you may wish to enter into, and that is going into hiring professional people to do some of that at your discretion?

**Ms Morrison:** We already partially do that in respect of our paid operators.

**Mr Levac:** Right, and you buy machines.

**Ms Morrison:** We buy the machines and have paid groomer operators. Now, because the paperwork is just so intense, we have to have paid administrators in some areas. I think now it's almost starting to go down to the next level, and we're hoping that, whether it be additional funds from that MTO validation sticker or just having everyone pay their fair share as a recreational user, this will allow us those few extra funds just to do it. A lot of these volunteers would be quite happy with \$100 just to do it. They're not looking for big bucks, because their hearts are still in snowmobiling.

1150

**Mr Levac:** Do you get a sense that we're on that slippery slope, that if you go to that next level, what happens is that those who are part-time volunteers become zero-time volunteers, and those who are part-time will be looking for that remuneration?

**Ms Morrison:** It's a funny way to deal with people. For the younger ones I would say yes, they would probably be looking to that, but a lot of them, as I said, still have their heart in it and it wouldn't be much. A lot of them cover the gas in the four-wheelers to lay the trail out and cover the gas in the chainsaws.

**Mr Levac:** The second part to that would be a natural question I've been begging to ask. What I'm hearing is that, because they've picked up such a great interest in the sport, it's almost destroying itself from within, so you've got to take these steps in order to prevent that from happening, and you don't want that to stop but you want to be able to control it. You simply want everybody to pay their fair share—no freebies.

**Ms Morrison:** Exactly.

**Mr Berlett:** One of the troubles I have with the volunteer is that he can volunteer to help do something, and on a Monday morning we've got to go out and run the groomer for the weekend traffic, and I call him up as a volunteer and he says, "Oh I could maybe do it Tuesday at 3 o'clock." That's not good enough in the system we have. Whereas, if we can pay operators, I can just call the guy and say, "Seven o'clock Monday morn-

ing you're there or somebody else will be there; I'll hire somebody else," and it does work. With a volunteer you can't ask them to set hours.

**The Chair:** Thank you both for coming before us. You've come a long way.

## TOWN OF HUNTSVILLE

**The Chair:** Our next presentation will be from the town of Huntsville. Good morning and welcome to the committee.

**Mr William MacDonald:** Good morning. My name is Bill MacDonald. I'm representing the town of Huntsville. Thank you for the opportunity to speak to you.

In this Bill 101 it refers a lot to crown land. The town of Huntsville's concern is public road allowances. Within the corporation of the town of Huntsville, as an organization, we have a lot of road allowances, some with roads on them, some with colonization roads on them, a lot of them possibly not in a maintained situation in the winter months. There are a lot of people who have to gain access to their summer cottages or hunting camps etc via these public road allowances. We have a concern that if these people, who freely have use of those road allowances now, are going to be forced into a mandatory permit, it's going to place a hardship on them.

The municipality has a second concern. We've been involved in two or three litigation cases where, because of the cutting of trails on road allowances for a portion of them to get to private land or whatever, we've had liability problems because in the summertime they're using them for four-wheelers and off-road vehicles. People who have four-wheel-drive trucks love to get off the road and see what they'll do. It forces the municipality into protecting itself legally, and at a great expense. In a couple of cases we've had to appear in court in regard to this. They go on these trails in the summertime and build bonfires and have parties. It then presents a problem to the private property landowner adjacent to it. My question, if you can give me an answer to it, is, when it states in here "all," does it refer to an organized municipality with public road allowances? If it does, I think we have an objection to it.

**The Chair:** Mr Spina, would you care to respond to that?

**Mr Spina:** I'll answer the question. The mandatory trail permit proposal in the introduced bill is really for the OFSC-sanctioned trail system. If there is permission for that trail system to have the public road allowance access, then theoretically, as the bill is currently written, the mandatory trail permit would be in effect on that public road allowance.

**Mr MacDonald:** In many cases the trails have been created over a number of years, and a lot of them do not have permission but they are using municipal road allowances. In two or three cases in the last four to five years that I can recall there may have been permission, and I think the resolution stated "without exclusive rights." What it really does do then in the winter months



is give them an exclusive right to a public road allowance. Would that be something, then, that the municipality would have to deal with? If so, that they're going to have to deal with? If so, they're going to have to deal with trails that already exist.

**Mr Spina:** It's a good question and I appreciate you bringing it forward, Mr MacDonald, because this is one of the reasons we are having the public committee hearings right after the first reading of the bill. It tends to be a far more open process for us to be able to modify the bill in order to ensure that we maximize its effect, if at all. So, we appreciate your comment on that.

**Mr MacDonald:** Would this committee then make a recommendation to municipalities, if this bill goes through, with regard to what they should or shouldn't do in this case? A lot of trails exist without permission, and it wasn't thought of a great deal before, but there have been lawsuits because of people getting hurt on them etc, whether it be summer or winter. If the municipality is made aware prior to the bill passing whatever of what they should do, it may make a big difference to the clubs where their trails are located, or they may have to relocate trails. It's something on which I know our municipality would really appreciate having some directions, some guidelines, prior to its passing.

**Mr Spina:** I would defer to the Chair.

**The Chair:** Perhaps, Mr MacDonald, in the interest of the committee I guess moving forward on your concern, I'm a little curious about something. It seems to me it wouldn't matter how many snowmobilers or how many snowmobile clubs or if the entire federation wanted to use the main street of Huntsville, they couldn't do it, obviously, unless the municipality passed a bylaw approving that. How is that different on a municipally controlled road allowance, whether or not it has been opened? Do you not have the final say?

**Mr MacDonald:** If you were approached, you would likely have the say. The trouble is that there are a lot of trails that exist and have existed for a number of years on road allowances, whether they access them from a maintained road or access them from private property, then get off them again from private property. But if you're on that trail, on a road allowance that happens to lead to your summer cottage or hunting camp, then with regard to this you're going to have to have a permit or be kicked off it.

**The Chair:** That takes me to the root of I think the conundrum here. The OFSC then cannot deem that to be part of their approved trail system without the approval of your municipality. So I think we have a protection there—but correct me if I'm wrong in that assumption—that they have to get your permission before it would be a trail that is deemed to require a mandatory permit.

**Mr MacDonald:** As long as that comes with this bill, so that for the existing trails they have to reapproach the municipalities where there are trails without explicit permission by resolution, so to speak, to gain that permission because the municipality may very well have a concern with a lot of people who access their cottage area

for whatever reason—to shovel the roof; I don't care what it is—to enjoy their recreational property. As long as they have to reapproach them for the ones they don't have resolutions for, for argument's sake, I think then the municipality would be protected, and so would the recreational property owner.

**Mr Levac:** Just a question of clarification: in two presentations I heard earlier, I thought it was mentioned that they seek permission on an annual basis.

**Mr MacDonald:** They don't seek it for all of them. There are some out there that are specific by resolution.

**Mr Levac:** There's an anticipation that that resolution is permanent?

**Mr MacDonald:** Yes.

**Mr Levac:** If that's the case, Mr Chairman, then it would just be our committee's responsibility, and I think Mr Spina made reference to that, to ensure that after first reading that gets clarified, before second reading.

**The Chair:** I want to assure everyone in the room—a couple have been travelling with us throughout these hearings, but for those just joining us today—the government changed the standing orders earlier this year and we've had I guess about four bills go through after first reading. Traditionally bills have gone through after second reading but, quite frankly, by that point each party has hardened their position, you've already gone on the record in the Legislature, it's tough to take your words back and you find a bit more of a combative tone in public hearings.

We've had great success by starting immediately after first reading, where literally all you do is read the title of the bill into the record. I think Mr Levac will attest that we've seen tremendous support from all three parties to initiatives such as the bill before us here today. I want to assure everyone that we have a far greater opportunity to reflect on what we hear and make sure the bill, when it finally comes back for second and third reading, is consistent with what is in the best interests of the majority of people out there.

**Mr Dunlop,** I think you had a question as well.

**Mr Garfield Dunlop (Simcoe North):** Yes, if I may, Mr Chair. Thank you very much, Mr MacDonald, for your presentation.

I was curious if you had a rough idea of the number of kilometres of unopened road allowance that may be used by some type of trail system. Also, as a second part to that question, how many kilometres, if any, do you have of abandoned railway lines that the municipality may have assumed? The snowmobile clubs would use those lines as well.

**Mr MacDonald:** To answer your second question, I don't believe the municipality has assumed any abandoned rail lines in their area.

As to your first question, there are—I'd only be guessing at it—50 to 100 kilometres of unopened road allowances. When I say unopened, some of them have colonization roads on them that existed prior to the organization of the municipality, possibly. They are not maintained whatsoever. Some of them have seasonal



roads that are maintained in the summertime to get to cottage areas. There are snowmobile trails there. It's hard, I really don't know off the top of my head, but I'm going to guess there are 50 to 100 kilometres at least just within our municipality.

**Mr Dunlop:** A quick supplementary: in all cases, though, the municipality does have liability insurance on all municipally owned property, including the unopened road allowances, right? Am I correct on that?

**Mr MacDonald:** They have liability insurance. This places a greater liability on them. Further to one of your comments on getting annual permission, I don't believe that the clubs wish to have something where there is annual permission, because of the time and money involved in building trails and opening them up. They have to cut trees etc to create a trail. They don't want to have annual permission because, if you say no to it and it cuts off 50 or 100 kilometres, you've cut off their trail system. They put them there in some cases with permission and in a lot of cases they've been there without it. I'd just like to see the municipalities at least know how to protect themselves before this bill becomes final.

**The Chair:** We appreciate that. Does anyone have any further questions?

**Mr Hastings:** Have we got any time?

**The Chair:** Yes. We have a couple of minutes.

**Mr Hastings:** Mr MacDonald, you mentioned existing lawsuits. Without going into detail, has the town of Huntsville been directly sued over this situation or have adjacent municipalities?

**Mr MacDonald:** Yes. We have been directly sued over the situation where snowmobile trails were put on road allowances. We have been successful. One was from a private property landowner who didn't wish to have it there and one was with regard to an accident. Whether you're successful or not, there's a great deal of expense in protecting yourself.

**Mr Hastings:** What is the town's recommendation on how this ought to be handled so that we have a smooth system and yet the municipality doesn't end up—

**Mr MacDonald:** If I may, I think in all cases the municipality—and they do certainly enjoy the benefits of snowmobiling, because there's a big benefit to it—would like to be able to have the control of what they do on their public road allowances. If it means allowing them to have a trail on there and having exclusive rights during the winter so they can charge the fee, then they certainly want to be named in their insurance policy for protection on that particular piece of land. If there is a trail on a particular described piece of land, then it can be insured for the municipality by the club, if that's the case. They may very well want to look at them one by one, so if there are road allowances that don't serve cottage owners or recreational owners that they're aware of, because they can have meetings as well to deal with this, there may not be a concern other than the liability that's created during the winter season, but in the summer season as well because the trail exists and people use it and it is public land that's open. I think it's quite a big issue to address,

but the municipality has to be protected or at least be given the opportunity to protect itself with regard to this.

**The Chair:** Thank you, Mr MacDonald. We certainly appreciate your bringing another new perspective to the hearings.

With that, the committee will stand recessed. Because we had one cancellation this morning, unless anyone around the table disagrees, we'll start the afternoon hearings 20 minutes earlier. We've had an indication from one of the presenters that they would be prepared to start at 1:40. If that meets with everyone's approval, the committee stands recessed until 1:40.

*The committee recessed from 1205 to 1345.*

**The Chair:** I call the committee back to order and welcome anyone who is just joining us as we consider Bill 101, the Motorized Snow Vehicles Amendment Act, 2000.

### SNOWMOBILE CLUB TRAIL WARDENS

**The Chair:** We have a few minutes to play with here and we asked the representatives from the warden program at the OFSC to move themselves up to 1:40.

Good afternoon and welcome to the committee.

**Mr Vic Trahan:** Good afternoon. Members of the panel, my name is Vic Trahan. I wish to speak on behalf of Snowmobile Club Trail Wardens. I speak in favour of the mandatory OFSC trail permit.

I would like to commend the Ontario government for recognizing the need for stability and safety on OFSC trails by putting forth Bill 101. I wish to thank the committee for allowing me the time to put forward my views and suggestions.

I agree with the OFSC's position and recognize that there are four cornerstones essential to making a mandatory OFSC trail permit successful.

(1) The final authority and decisions relating to mandatory OFSC Trail permits, especially use of permit revenues, must remain with the OFSC.

(2) Trained OFSC wardens must have the authority under the MSVA to enforce mandatory OFSC trail permits on all OFSC-maintained and -groomed trails during the snowmobile season.

(3) Mandatory OFSC trail permits must be an absolute and easily enforceable requirement on all OFSC trails.

(4) The OFSC trail wardens recognize and understand that reasonable accommodation must be made for traditional users to have access on crown land.

Just a bit of history of where I've been and where I got into snowmobiling: over the last 30 years, snowmobile trails have been built and maintained by clubs. The local trail systems were developed for family members and friends. These snowmobile superhighways that exist today are there because club volunteers built them. They searched for the best routes, researched the properties and got permission from landowners through land use agreements to put them through private property. Most of these were granted through friends or community-minded landowners. Club volunteers have had environmental



assessments done in sensitive areas, club volunteers have submitted applications to MNR for land use on crown property to install bridges, and in some areas paid stumpage for trees that were cut while building new trails on crown property.

The local trail system is a valued community resource that provides recreational, social and economic benefits to our area during the winter months. Not so long ago, after the hunting season, businesses would close as winter was a drain on the finances of the business community. Today there are many establishments enjoying a healthy income as well as creating year-round employment through catering to the travelling snowmobilers.

My introduction into snowmobiling was in the early 1960s, when my brother traded an old Volkswagen for a Polaris Star, late 1950s vintage. This machine was built like a tank: a solid steel front end and floor; a 5-hp Briggs and Stratton motor was the power plant that sat behind you with an open chain that drove the track, two strips of belting with steel grouser bars and a wooden slider system. The throttle was a lever attached to a covered solid steel cable that was attached to the carburetor. Once you set it, it stayed at that speed—no automatic return like today's sleds. I recall that one time I got this old Polaris stuck in a snowdrift, and the three of us, my father, my brother and myself, were waist-deep in snow trying to get it moving again. We had the throttle set so as to help us, when all of a sudden it took off and we were still waist-deep in snow. We could only watch as it made its way to the only large object in the field, a hydro pole. That stopped it. Who knows how far we would have had to chase the thing before it got stuck again? Those are great memories of my introduction to this great sport and where the interest began.

In 1974 my wife and I, along with a couple of friends, Paul Burns and Eric Loxton, often travelled from Powassan to Corbeil, about 30 kilometres away, using the route that we took. There were no trail systems. Most trails in the woods were only about four feet wide. The odd time a group of volunteers would join together to smooth out sections of the trail, grooming: that was an old bedspring from a single cot that someone had thrown away. What a laugh when you look at today's trails. There were no signs and no connecting trails. Half the time you had to ride the back roads to get any distance—not the safest way, but the only way. Back then, that 30-kilometre ride would take us about three hours to get there, we'd spend an hour at the Four Seasons Snowmobile Club with friends from that area and then head home.

In 1988 I was residing in a small community called Alban, near the French River. The neighbour's son, Kevin Sarginson, and myself decided to create a trail to the small community of Bigwood, eight kilometres away by road. Most of the way was on crown land and very rough terrain with a couple of swamps to cross. Luck was with us on the way over and we managed to work our way through the small trees and over a few really steep hills. Finally, after about four or five hours we managed

to reach our destination, the Champlain Hotel. The proprietors of the hotel, Chris and Joan Cottelle, were ecstatic: a snowmobile trail to their business—wow. As we had lunch, the planning began. Since I had grown up in the area I became the route master, if you will.

After lunch my friend and I headed home. It was getting close to darkness, so we decided to cut across a pond and avoid some very steep hills that we would have to climb. It looked OK, so I started across and had my friend wait till I reached the other side. About 30 feet from shore I got this sinking feeling as the rear end of the sled started to go down. I got to about 10 feet from shore, and by this time I was standing on the seat and giving the machine all the throttle I could. No use. I didn't get wet, but the rear end of the machine was under water right to the motor. I was on the run for shore and I made it. It was very late that night by the time we got the sled out of the ice and running again, and a very welcome sight was home.

That was just a small look into snowmobiling in my early years—for me, unsafe trails and unknown dangers. I just wonder how many volunteers in this room could stand up and say, "Been there and done that."

Then, in 1990, a friend of mine and a very avid snowmobiler at that time, and still today, Bill Small, decided to pull all the snowmobilers of our community together and form an OFSC snowmobile club with the intention of developing a trail that would connect to the Sudbury trail system. The original group of about 20 formed the French River Snow Voyageurs Snowmobile Club.

With some financial help from the Sudbury Trail Plan committee, sponsorship from the shop of a snowmobile raffle and section 25, we managed to open a trail to Killarney Road and the Sudbury Trail Plan trails by the winter of 1991. We were on our way to adventures in unknown territory. Then Sno-TRAC came along with a matching dollars program, and this provided the funding to develop these narrow trails to a standard TOPS trail system, complete with trail signs, lake stakes and better grooming equipment.

In 1998 and 1999 the Ontario government of today came through with a \$10-million injection of matching dollars of SST1 and SST2, which provided funding for further trail development, building the much-needed larger bridges, more grooming equipment and groomer maintenance buildings. The interprovincial TOPS trail system is now very near to completion, with only a few of the northern trails still needing further development.

There are 281 OFSC member clubs incorporated as non-profit clubs, with a mandate to invest their revenues on snowmobile trails. Clubs formed the OFSC to act as a supporting and coordinating body for their efforts to establish a provincial trail network and to represent their provincial interests, driven from the bottom up by volunteers elected by their clubs.

The OFSC and its member clubs have created the largest, most successful recreational trail network in the world under the user-pay system. To continue this



success and to keep trails open and operating, it is imperative that the OFSC and volunteers continue to play the lead role in controlling their own destiny. One of the fundamental vehicles for this self-determination is the OFSC trail permit, and the allocation of permit revenues through the OFSC trail funding agreement with the OFSC member clubs.

OFSC trail wardens: clubs have about 20 core members that are always there to volunteer their time, and among these are the volunteer club trail wardens—approximately 2,500 across the province. Their job is to enforce the user-pay system. The only tool they currently have today is the Trespass to Property Act. The OFSC trail wardens are trained to be good ambassadors for snowmobiling, giving directions to touring snowmobilers and assisting snowmobilers in distress. The clubs often rely on trail wardens to direct traffic during club rallies or Easter Seals Snowarama rides.

I'd like to expand on that. Over the past years, the OFSC member clubs have contributed pretty well consistently \$500,000 per year to Snowarama, and to date we have I believe \$14.5 million that we've put into Snowarama.

Warden instructors provide a four-hour classroom course and a written question period before they become club trail wardens. At the end of the course, the wardens are provided with a warden ID number card that identifies them as a club trail warden, along with a book of three acts: the Motorized Snow Vehicles Act, the Occupiers' Liability Act and the Trespass to Property Act. To maintain OFSC trail warden status, they must take a refresher course every two years.

The OFSC warden program has produced a video to help instructors and clubs better understand the proper procedures of laying a trespass charge and following the charge through court, where a person without an OFSC permit refuses to leave the trail system. Last year, the OFSC introduced a distinctive fluorescent red warden vest in order to make OFSC trail wardens readily identified from other groups. I brought one vest with me.

The club trail wardens recognize and understand the need for traditional user groups to have access to crown land. This has never been a problem so long as it has been within reason. These volunteer wardens are the club's permit enforcement group. Without these valuable volunteers being able to enforce the OFSC trail permit on all OFSC-maintained trails, I feel we will not succeed and this billion-dollar-a-year industry will fail.

It has always been mandatory to have an OFSC trail permit on OFSC trails. The problem has been to enforce compliance on crown property. As a warden instructor and club warden for my own club, I sincerely hope the Ontario government of today can make an amendment to Bill 101 to include wardens as the enforcement group for OFSC trail permits.

The OFSC needs your support. As in the past, sustainability should not mean, or leave us open to, government takeover. The clubs must remain in control of their own destiny. It must be an OFSC trail permit, enforced by

OFSC trail wardens, with trail permit revenues distributed through the OFSC trail funding agreement.

Last year I contributed well over 200 hours to a sport I enjoy and wish to keep control of, for only then can we truly be a not-for-profit organization with our best interests at heart. Without control of our destiny, why would I and thousands like myself volunteer? We would have no reason. Thank you.

1400

**The Chair:** Thank you very much for your presentation. That leaves us time for one quick question from each caucus. This time we're starting with the government. Mr Spina.

**Mr Spina:** Did anybody else have a question?

Vic, thank you very much for coming forward—a very well thought out presentation. It gives us all a better understanding of what goes into being a trail warden, the responsibility it has and the importance of wardens to the system.

A quick question: how do the trail wardens interrelate with the STOP officers?

**Mr Trahan:** The trail wardens are permit enforcement. They're not a law enforcement body; they're not trained for that. The only thing we really use in wardening is the Trespass to Property Act. That's the only connection. We try to work with them, to have somebody who has some authority to stop somebody.

**Mr Spina:** So the STOP officer is a sworn special constable, usually of the OPP?

**Mr Trahan:** Yes, they are.

**Mr Spina:** And the wardens, at this time, are not?

**Mr Trahan:** No, they're not.

**Mr Spina:** Thanks, Vic. I appreciate it.

**Mr Levac:** Thank you, Mr Trahan. I appreciate your presentation, and most of all I appreciate your personal touch to it, because it gives a bit of identity to what you're talking about. So I appreciate your history.

A quick question—I wanted to follow Mr Spina's, but he clarified exactly what we were talking about, and I'm glad he did, and you made reference, between STOP and your group, and that you're permit.

"Traditional users" has been used in about three or four other presentations to date, and you said "within reason." Can you clarify for me, first of all, for any of us who are not 100% familiar with traditional users, who they are and why we would not worry about them, and can you explain your own comment about "within reason"?

**Mr Trahan:** Traditional: I know in my own area we have no problem with trappers. They were there before we were, so we have no problem with them using the trail system to get to their traplines; hunters, if it's in hunting season and they're going to a hunting camp. The exception to that would be if a person had a trapline in Sudbury and left from North Bay to go to the trapline and was riding a Thunder Cat. I wouldn't call him a trapper going to his trapline. That would be a bit out of reason. That's why I say "within reason." The person who is riding a Thunder Cat or an MXZ—you know, a \$13,000



machine—is not a fisherman. He's out there for the sport of riding. So that's "within reason." You can usually tell by the way they're dressed.

**Mr Levac:** I appreciate that clarification. So you're not trying to say you want to restrict traditional users; you want to interpret the difference between a recreational user and a traditional user.

**Mr Trahan:** I don't think any club has a problem with that.

**Mr Gilles Bisson (Timmins-James Bay):** I've got to ask you this question: When you got this Polaris Star you talk about stuck in the snow, what did you really call it?

**Mr Trahan:** I really wouldn't want to comment on that.

**Mr Bisson:** I didn't think so.

Just a general question: One of the things you ask for in your second point is that you as wardens want the ability to basically enforce the act. But also within the act is the whole issue of, are people driving with a driver's licence, are they basically following the rules of the trail? Are you advocating that wardens take on what normally would be the responsibilities of the OPP?

**Mr Trahan:** Not in any way.

**Mr Bisson:** Just the permit?

**Mr Trahan:** Just the permit.

**The Chair:** Thank you very much for bringing the perspective of the wardens to us here today.

#### CANADIAN COUNCIL OF SNOWMOBILE ORGANIZATIONS

**The Chair:** Our next presentation will be the Canadian Council of Snowmobile Organizations. Good afternoon, and welcome to the committee.

**Mr Michel Garneau:** Mr Chairman, honourable committee members, ladies and gentlemen, I'd like to begin by thanking this committee for allowing me to speak on the issue of Bill 101 and the broader issue of sustainability as it applies to the organized snowmobiling community in Ontario and, in more general terms, the rest of Canada. I would also like to compliment the initiative taken by the Ontario government and the inter-ministerial task force in attempting to address the serious and legitimate concerns brought forth by the Ontario Federation of Snowmobile Clubs. It is extremely encouraging to see the government recognize the challenges faced by the OFSC and its thousands of dedicated volunteers as they strive to maintain the world's largest network of interconnected trails. Given the other pressing needs that occupy your collective energies, thank you for your time and will to get involved.

My name is Michel Garneau. I am the general manager of the Canadian Council of Snowmobile Organizations, or CCSO. The CCSO was created in 1974, with the goal of providing leadership and support to organized snowmobiling in Canada. Our membership includes each of the 12 provincial and territorial snowmobile federations in Canada. In essence, we provide a medium for the sharing of information between all our members, we

interact with the federal government on our members' behalf, we collect data related to the activity of snowmobiling and we assist in the coordination of important programs in such areas as safety and tourism.

I am proud to say that the organized snowmobiling community in Canada is blessed with a team of dedicated, passionate and visionary leaders who have allowed this sport to develop from the humble beginnings and social gatherings of the late 1960s to the present system that tends to the 130,000-plus kilometres of signed, groomed and interconnected trails that make Canada the undisputed world leader in recreational snowmobiling.

On a personal note, I was raised and resided in northern Ontario most of my life and am well acquainted with the importance of this industry to the communities of the north. As well, and perhaps more importantly, I am a passionate snowmobiler who has witnessed first-hand the transformation of our sport from its utilitarian roots to its present world-class level. I invite those of you who have not sampled modern snowmobiling on our groomed and signed trails to try it. You may find our highways rough by comparison.

Recreational snowmobiling has evolved into an impressive economic engine in this country. It is currently estimated that our sport generates approximately \$3.1 billion per year in economic activity. More important than this impressive figure, however, is the fact that most of this money is generated in an otherwise dormant tourism season and in often remote areas. Having seen first-hand the importance of this sector to the very survival of many communities, I cannot stress strongly enough the need to act quickly to ensure the sustainability of our trail system and the dollars it generates.

Snowmobiling is also a generous contributor to government coffers. According to the OFSC's own 1998 Winter Gold study, it is estimated that \$63 million in tax revenue was generated in that year alone. This represents a significant infusion of funds to the province. Ensuring the survival of the infrastructure that allows this level of activity is what is at stake now.

I would also like to point out one other, and even more important, reason for acting to save organized snowmobiling in Ontario: safety. Signed, groomed and maintained trails have proven to be, in every jurisdiction in Canada, an indisputable asset to the safety of snowmobilers. Historical statistics clearly show that the overriding majority of snowmobile-related fatalities occur off groomed trails. In recent years, an average of 80% of all snowmobiling fatalities have occurred off sanctioned trails.

This figure is even more impressive when one considers that the majority of riding and distances travelled take place on groomed trails. This reality may fly in the face of critics who argue that these impressive new trails are a licence to speed, but reality proves otherwise. In fact, the fatality rate for snowmobiling in Canada has fallen by over 43% in the last five years. By anyone's standards, this is an outstanding success story, and a major part of this can reasonably be attributed to the



development of maintained trail systems. Considering that many provinces, most notably the four western provinces and Newfoundland and Labrador, have during this time begun to actively develop interconnected trail networks, these facts stand as a glaring endorsement of the safety benefits of properly maintained trails.

I would like to take this opportunity to speak in favour of the safety-related aspects of the new act. I believe that the revised regulations listed in this bill are a definite step in the right direction and will help to provide enforcement officers with some of the tools required to ensure safety for all on our trails.

1410

To return briefly to my previous point about net economic benefits, think of the tremendous savings realized in our health care system alone as a result of this impressive reduction in accidents. In the pragmatic world of accounting and finance, the provincial coffers not having to debit for additional health care and lost productivity is truly a credit for all Ontario citizens and taxpayers. The monetary aspect alone fails to consider the tremendous saving in human costs that cannot be evaluated in economic terms. As you can see, organized snowmobile trails benefit much more than just the snowmobiling community; it is definitely win-win for everyone.

The case, then, is clear: properly maintained snowmobile trails are a proven net benefit to society. These have proven invaluable for safety reasons and have also spurred the creation of an increasingly active and lucrative tourism sector.

What, then, are the problems? Well, it can be traced back to simple economics: revenues versus expenditures. In this particular instance, revenues have not kept pace with expenditures. I am certain that previous guests have explained in detail the causes for this discrepancy, so I will not reiterate what has already been clearly stated. I can add, however, that this predicament is not limited to Ontario. In all jurisdictions across Canada, it seems that economic hardship is being felt in real terms.

The challenge of keeping up with rising expenses and finding new revenue sources to make up the shortfall has reached crisis proportions in many areas. In New Brunswick, for example, where snowmobile tourism is the number one winter economic generator, the New Brunswick Federation of Snowmobile Clubs has recently taken the bold and desperate step of announcing the closure of their trail system unless the government can assist them to overcome the funding crisis that is being faced. Much as here in Ontario, many clubs are facing the threat of insolvency and volunteers are quitting out of frustration. This desperate state of affairs threatens the very survival of the industry. Should things continue unresolved, all of the benefits I have discussed previously could be a thing of the past. Negotiations are ongoing and snowmobilers across Canada are united in their support of the NBFSC and OFSC as they strive to find workable and equitable solutions to these problems.

The OFSC enjoys a rather privileged position in the Canadian organized snowmobiling family. Not only is it

among the oldest federations in Canada and the largest Canadian organization, with over 122,000 permits sold last season, responsible for the largest network of interconnected trails at over 49,000 kilometres, but it is also a leader and major contributor to the development of the sport in other areas of the country. Much of the recent development boom that has been experienced in the west is due to experiences learned in Ontario, Quebec, New Brunswick and other innovative Canadian associations.

The OFSC has, in numerous instances, developed innovative solutions to complex problems. A prime example of this would be the creation of the Snowmobile Trail Officer Patrol, or STOP, program in partnership with the Ontario Provincial Police. This enforcement tool has since been adopted in part or in whole by numerous jurisdictions, not only across Canada but North America. The OFSC stands as a clear and living example of what a large group of devoted and passionate individuals can do.

Why sell the merits and accomplishments of the OFSC? Simple: The OFSC has, over the span of 30 years, single-handedly created this impressive network of trails. Considering the many things that have come and gone in this time span, these accomplishments truly stand out, even more so when one considers that this development was engineered and executed by volunteers. This continuity and rich history firmly establishes the competence and qualifications of the organization as the builder and custodian of the trail system.

This leads the discussion squarely into the critical issue of sustainability. The OFSC and its member clubs have recently come under increased financial pressures. The organized snowmobiling community, be it the OFSC, the local clubs or the individual volunteers, have struggled to keep pace, but despite enormous and creative efforts, have been unable to do so. Sustainability can mean many things to many people; however, at the end of the day, it means the ability to continue to do something. That ability is now being jeopardized by an overload on the system.

Across North America, different jurisdictions have adopted various means of ensuring the continuance and development of snowmobiling as a safe recreational activity. In the United States, for example, many states provide rebates on gas taxes as a means of financing the operational demands of maintaining trail systems. This accounts for the large discrepancy that exists between permit fees in the northern states and those that exist in Canada. This influx of operating capital helps to cover most of the costs, thus leaving very little to recoup from the pockets of individual snowmobilers.

Across North America, the other large and successful jurisdictions depend on multiple sources of funding to ensure that the needed operating capital is in place. In Quebec, for example, the Fédération des clubs de motoneigistes du Québec, or FCMQ, receives a rebate of \$25 for each snowmobile registered, whereas in New Brunswick the federation receives \$10 per registration. This represents an injection of over \$3.9 million for the FCMQ and \$472,000 for the NBFSC. Please bear in



mind that these amounts are over and above the revenues generated from permit sales. These are significant numbers.

I would further like to note that Ontario currently has over 363,000 registered snowmobiles. To continue with our comparison, consider also that Ontario and Quebec permits are virtually identically priced, but the OFSC has almost 43% more kilometres of trails to maintain but only 16% more paid members. It does not take an accountant to see where the shortfall occurs. The problem is very real.

In Vermont, on the other hand, the state has enacted mandatory permit legislation but also provides gas tax rebates. Furthermore, the federal government provides trail fund payments. Consider again New Brunswick, where the NBFSC, in spite of receiving registration money, now find themselves with their backs against the wall as they seek other means of injecting money into their troubled system.

These are glowing examples of the need for multi-source funding as an effective and sustainable solution to historic financial concerns. In fact, as things currently exist, Ontario is the only major snowmobiling jurisdiction that does not provide operational funds for snowmobile trails. If sustainability is to be more than a pie in the sky, the current position will surely have to be re-examined with an eye to increasing the revenue base. Failure to do so could jeopardize the entire system and turn this process into an academic exercise of "could have" and "should have." Surely this cannot be allowed to happen.

Now, to address some of the specific issues of Bill 101, I would like to tackle the issue of mandatory permits. Mandatory permits, in and of themselves, if properly executed, would help to address some of the concerns expressed by the Ontario snowmobiling community. One of the major issues faced by the OFSC and its wardens is the inability to enforce permit compliance on crown land. This is especially serious in light of the fact that most trails situated on crown land are located in the north, where the population base is small and the trail networks and riding seasons are the longest. The financial burden on these clubs is already a challenge, without the loss of revenues and increased costs brought on by non-contributing users. This type of abuse is wrong in any circumstance, but especially when the work is being carried out by volunteers. This is tantamount to theft and would not be tolerated in any other context. Mandatory permits, then, would simply provide enforcement officers with tools necessary to stop this abuse.

At this time, I would also like to address the issue of traditional users and possible exemptions. Many private citizens and other recreational groups have expressed concerns on the issue of loss of rights resulting from such a law. As snowmobilers and responsible citizens, it is not our goal to limit access to public land to other users nor to create private land out of public. Rather, as I stated earlier, we aim to stop the abuse that goes on by a select group of irresponsible persons. Again, this problem is not

specific to Ontario, as abuses of this type occur in all Canadian jurisdictions.

Traditional users and others who earn their livelihood deserve, and should, by all means, have the right to use the trails so long as they are not engaging in recreational snowmobiling at others' expense. Mandatory permit legislation is not a case of caving in to a group of elitists, as some would have you believe, but rather a workable solution to the cold and harsh reality that all who play must be prepared to pay; pure and simple, nothing more, nothing less. It is crucial, then, that clear and concise safeguards be written into the act to ensure access by all but prevent abuse by the few.

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I would now like to first express concern over the concept of trail permits being issued under the control of the MTO. With all due respect to the individuals and collective expertise which make up this arm of the government, I believe that proceeding with such an approach would prove difficult at best and unworkable and destructive at worst. While these words may seem harsh at first, it's my sincere belief that usurping OFSC control of the permit would lead to damaging results.

To begin with, most volunteers and landowners donate their time and land access under the premise that it's done as a good deed for fellow citizens. Call it a form of civic duty, if you will. However, the very perception that any and all efforts are carried out for an impersonal government agency could be catastrophic. It's quite reasonable to expect that volunteer participation would disappear more quickly than a mirage in the desert and that existing and long-standing landowner access agreements would also go the way of the Edsel.

Rightfully or not, we live in a world where people act on perceptions, and the very insinuation that the system has been taken over by the government could have terrible and irreversible consequences. This must not be allowed to happen or we risk losing 30 years of dedicated, collective effort almost overnight. The volunteers who have built and continue to build must be allowed to maintain some sense of ownership in the system.

As it was stated earlier, the OFSC created and has been dealing with this very system since its inception and is ideally positioned to react to dynamic and grassroots concerns. In an increasingly globalized world based largely on the principles of comparative advantage, I believe the OFSC's track record proves beyond a doubt its comparative advantages in this area. You do not survive 30 years as an organization without having a well-established degree of competence in your field.

Enforcement is another aspect of this act that must be addressed properly if the premise of mandatory permits is to be honored. It's quite obvious that any law or rule is only as effective as the ability to enforce it. To paraphrase, you are innocent until you are caught. That, unfortunately, is the reality of the situation.

In a perfect world, all people would act according to right and wrong, and while most do, some can only be reached through enforcement. For this reason, combined



with the fact that the OFSC has a trained pool of over 2,500 qualified wardens, we feel it to be practical and effective that the wardens should have the authority to enforce mandatory permits. Given the strains on policing services that exist in all areas of the province, we believe it would be an economical way of ensuring that the letter of the law is adhered to.

As you're surely aware, the issues governing the sustainability of snowmobiling are indeed complex and uncertain. However, one thing is certain, that is, the proven economic, societal and ecological benefits of safe snowmobile trails. Snowmobilers in Ontario are proud of the trail network that exists and most Canadians are envious of what has been accomplished. The time has come for all affected parties to do their part to ensure that the sport and all of its benefits continue to grow.

Organized snowmobiling in Ontario needs your help. The potential solutions are plentiful. At the end of the day, however, they all revolve around the need to bring more money into the system. For example, while many businesses are good citizens and help to support the industry that in many instances provides their livelihood in the winter months, there are still those out there who are more than happy to sit back and reap the benefits while contributing little or nothing.

Mandatory permits are a welcome first step, but please do not leave under the impression that this will be the cure-all. This must be implemented in conjunction with other means or initiatives. I have discussed working solutions that exist in other jurisdictions, notably registration and/or gas tax rebates. I am strongly encouraged and optimistic that this committee will seriously consider the issues and solutions that are being discussed here today.

Discussions such as these are taking place across Canada, and most notably in New Brunswick. It would be naive to believe that others are not following this process very closely. We are presented here with the opportunity to do it right the first time and set a positive and constructive precedent. The problems are complex, the solutions perhaps more so, but the capability to ensure the sustainability of our trail system does exist. The time to act is upon us.

Once again, thank you for your interest in snowmobiling and for the opportunity to address you here today on these important issues.

**The Chair:** Thank you very much. That has taken us the full 20 minutes.

**Mr Spina:** On a point of order, Mr Chair: In light of the fact that this is a Canadian federation and M. Garneau has touched on points that have been asked by various members, could I ask unanimous consent that each party at least be allowed to ask one question?

**The Chair:** In fact, the clerk informs me we have a cancellation of the 3:30 presentation, so we have almost 10 minutes to play with. I'll certainly allow that. This time the questioning will commence with the Liberals. Mr Levac.

**Mr Levac:** Thanks for that motion, Mr Spina.

Monsieur Garneau, you asked us maybe a rhetorical question in your presentation: are we paying attention? I really get the impression that you're passionate about this. You believe we are in crisis, that there's a position we need to take in order to save 30 years' worth of work. Do you believe that in going the route of Bill 101, without amendment or modification, we are doomed?

**Mr Garneau:** I will tell you that it's a definite positive step, but my personal belief is that if other issues aren't piggy-backed on to this, we'll be going through this process again in a very short time frame.

**Mr Bisson:** I guess it's a bit of a rhetorical question, but what you're telling us through this is that it's not just the issue of making mandatory permits, but you need to have some other mechanism of stable funding for the clubs. That's what you're asking for.

**Mr Garneau:** Yes. I'm informed from the general manager of the OFSC that there's currently an operational deficit in the magnitude of about \$8 million. These funds have to come from somewhere.

**Mr Bisson:** Is there a follow-up or is it just one per caucus?

**The Chair:** Go ahead.

**Mr Bisson:** The question I asked the ministry earlier and I would ask you is, we know there are machines out there that are not registered. Often within our clubs we talk about the fact that there are so many machines out there that don't have stickers. The reality is, a lot of those machines are out of service and in some cases are dual machines. I've got two and I only use one at a time.

If we make mandatory permits, does it really increase the revenue for the clubs? Most people I see on trails up in my area already have the permits on. I'm just wondering if we're coming at this a little bit backwards.

**Mr Garneau:** No, it would definitely be an asset and would definitely be a favourable step forward. Again, some of it has to do with the fact that in a lot of areas in the north, where it's densely populated and they have on the whole a greater number of kilometres of trails to maintain, they are the clubs that are really feeling the pinch. If you're dealing with a certain mentality where people—I don't want to denigrate traditional users, but there are still some people who are sort of teetering on the edge of the traditional user. We think it's OK for them. Maybe they are just going out twice a year, so it's OK for them to run down 50 kilometres of groomed trails.

I'm a permit holder. I paid for that, and so did everybody else around. These volunteers are donating their time. They're increasingly being pushed to work at fundraising, and it's an exercise in futility. You're seeing the burnout in these people's eyes. They're working out of passion and they just can't keep doing it forever. I'm not going to say the system is going to collapse tomorrow, but it's inevitable. Something has to be done.

**The Chair:** Mr Spina?

**Mr Spina:** I'm going to defer to my colleague.

**Mr Hastings:** I've been to a lot of committee hearings. Thank you very much, Michel, for probably



one the most passionate approaches to this subject matter. I can see you feel very deeply about it and have worked in the field.

**Mr Garneau:** Thank you.

**Mr Hastings:** I have a couple of questions for you. One, to what extent have you had any success, since you represent the community and the industry nationally, in getting any kind of dollar bills out of the federal government? They have the Canadian Tourism Commission. They're always promoting, in an uncoordinated way—I guess we can all fault ourselves provincially as well on that—to attract new people to the country for this particular industry or sport.

We've had the much-vaunted considerations and pronouncements from Prime Minister Chrétien regarding a new infrastructure program, more so for roads, bridges and the usual stuff, universities and that. Have you ever had any remote commitment or awareness from the feds regarding—

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**Mr Bisson:** Yes, where are the Liberals on this? I want to know.

**Mr Hastings:** The former PCs too, I would think, being a fair-minded individual.

**Mr Bisson:** You are. I was wondering when you were coming out with this question.

**Mr Garneau:** I'll be honest with you. I haven't been in this business for the last 15 years so I'm not necessarily privy to everything that happened before me. I will tell you that there has been some money channelled into snowmobiling infrastructure through the various economic development agencies; for example, ACOA and FedNor. Again, we're sort of opening a can of worms here—I don't want to reactivate the Meech Lake debate—but snowmobiling does fall under provincial jurisdiction. So there is a bit of a conflict. If anybody is listening from the federal government and you do want to issue a cheque, we'll gladly receive it.

**Mr Hastings:** They probably don't even know you exist.

**Mr Garneau:** We're working on that.

**Mr Hastings:** Good.

My other question relates to enforcement and the permitting and that whole thing. Can you cite a jurisdiction in North America or any other part of the world where the volunteer community, in this case snowmobiling, lost control of their enforcement function and had it taken over by the state, ministry, what have you, and that didn't work out very well?

**Mr Garneau:** To be honest with you, no. But if any of our learned individuals could comment on this, I would gladly listen. I can't tell you that. I don't have any experience in the matter.

**Mr Hastings:** But you have considerable difficulty with MTO being the continuing monitor.

**Mr Garneau:** Again I want to deal with the aspect of perception. Reality's one thing, perception is another. All I can tell you is what I hear out in the field. The volunteers I hear discussing the matter are extremely

concerned. There's the whole perception of it being taken over and all of the negative results that would fall out of that.

**Mr Hastings:** I get you. Thank you very much.

**The Chair:** Thank you very much for your presentation. It was certainly very detailed.

## IRON BRIDGE NIGHT HAWKS

**The Chair:** Our next presentation will be from the Iron Bridge Night Hawks. Good afternoon and welcome to the committee.

**Mr Greg Brown:** Good afternoon, Mr Chair and members of the committee. My name is Greg Brown. I'm treasurer of the Iron Bridge Night Hawks, which is a tiny snow machine club in Iron Bridge, Ontario, a tiny town of 900 people about an hour and 15 minutes east of Sault Ste Marie, between Blind River and Thessalon on Highway 17. In my other life, 14 months ago I purchased a motor inn in Iron Bridge. I moved up from Toronto and the cultural world to Iron Bridge and have learned a lot in 14 months about snow machines that I didn't know before.

I'm here is because we are extremely concerned in Iron Bridge—and I think I can say the whole village is concerned, and at every level, whether it's the club or the businesses or the municipality, which is the municipality of Huron Shores—about the disappearance of seven-day permits this year. We're very pleased the government is getting involved in wanting to have mandatory permits. When the regulations come out, and however the situation plays out, who issues them and what they are is of less of a concern to us than the disappearance of the seven-day permits.

It's my understanding that in Ontario last year 5,000 seven-day permits were sold, of which about 47% were sold in Algoma, which is district 13 of the federation. Of that 47%, which is about 2,500 permits, about 90% were sold to tourists from out of the province, primarily people from Michigan, Ohio, Illinois, Minnesota and Wisconsin, but primarily Michigan and Ohio. Those people get on Interstate 75, drive up to Algoma and spend the week. Last year they purchased a permit for C\$85 for the week. This year the reality is that this permit doesn't exist.

When I go down with my colleagues from Iron Bridge, Wawa and everywhere else in Algoma to the big snow machine shows coming up in a month in Michigan, I'm going to be talking to people about purchasing either a \$30-a-day permit to come to Ontario, or a \$120 permit, if they buy it before December 1, or a \$150 permit, if they buy it after December 1. Last year was my first time at snow machine shows in my life. At \$85 a person for a seven-day permit, it was a difficult sell to people who had never been to Ontario, and there are lots of them and we'd like them to come. What we could tell them was, "We have fabulous trails. The scenery's beautiful. The accommodation and food are pretty good. You'll have a great time, and you'll make up for the difference in money from your \$10 seasonal permit in Michigan by the



exchange in the dollar and the relative economic situation. It costs less certainly in northern Ontario."

That trades off, and people pay attention to that and listen to it, especially with the dollar at 45%. When I go down there in a month and tell them they have to buy a \$120 or a \$150 permit—I ask you to put yourselves in their position—they're going to say to me, "Greg, \$150? What if there's no snow between Christmas and New Year's?" There wasn't any snow in Algoma last year. "Is it refundable?" "No." "What if my wife's sick and we can't go, is it refundable?" "No." "What if my machine breaks down?" "No, it's not refundable." Then they're going to say, "Well, it's \$30 a day. If I go for five days, that's 150 bucks." I know what I would do: I'd go to Minnesota. I think that's what's going to happen here.

In the long term, people who have come for the last seven, eight, 10 years to Ontario from Michigan and pay the \$120 and buy a season pass, I think they're going to continue to come, because they know we have great trails. It's going to be extremely difficult to attract new tourists to northern Ontario, to an area that by all accounts is slightly more depressed than southern Ontario. We need that incentive in the north to have that permit. Whether it's a seven-day permit or an out-of-province permit, we need a permit that will allow us to attract new markets to northern Ontario. Without it, I would look at my business and go, "Maybe I should close for the winter," which the previous owners of my business did for four years and went to Florida. There are businesses along the North Shore and Lake Huron which are contemplating just that.

That's the essence of my presentation. We are extremely concerned about it. The Minister of Tourism talked a lot about trying to get into new markets for Ontario. That's what we're trying to do. Without some kind of visitor permit it will be impossible. As I said, Michigan permits are \$10.

My predecessor here in this chair talked about difficulties in financing the trails and all that, and we certainly support it as volunteers. The businesses in Iron Bridge all contribute in some way to the clubs and to the development of activities in the area, but if there's not a spinoff to our businesses, we won't. We'll put our donations into something else, and our time and our energy.

I'll give you an idea in my little tiny business of how much money it means. We opened my business for the first time last winter. In December, when we had no snow, we did \$1,400 in motel rooms out of a 25-unit motel, of which we kept 15 rooms open for the winter that we had winterized over the summer. We had snow from February 1 until about February 27; it was melting by then. We did \$4,300. That allowed me to keep employees on staff, to open longer hours, to pay some of the bills from November and December when I lost a pile of money. For the numbers in the restaurant it was the same kind of thing. In December we did \$5,000 in sales; in February we did \$10,000 in sales. Combined, that's a huge increase in a tiny business. That's one business, and it's the same for all the businesses. There are businesses up there that have been developing that market now for

years and doing extremely well. We all feel that at the club level we'll lose money, at the business level we'll lose money, and that means the partnerships will disappear in the long term. We think it will be disastrous.

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However it gets worked out between whether MTO issues the permits or the federation issues the permits, it needs to have a serious discussion. I think our regional association has even talked about having Algoma visitor permits that are only valid in Algoma. If it's MTO that's going to sell them, we'd approach MTO with that concept; if it's the federation, we'd approach them. The reality of tourists, I think it's safe to say, certainly in our area, those people from Detroit and Toledo and Columbus and Chicago, they're not going to Muskoka. They're not coming over here. They're not going to Barrie. Why would they come here? There are as many people on the trails here as they face every day at home. They want to go somewhere where there are fewer people on the trails and where the trails are in good shape. They're willing to pay but I don't think they're willing to pay what is currently now the rate.

That's my proposal. Thank you for listening to me.

I have two resolutions which I will read to you, one from our club:

"Whereas the snow machine touring industry is vital to Algoma district, to the economic development of the region and its snow machine clubs and trails; and

"Whereas the government of Ontario is endeavouring to facilitate excellent trails and trail development for all through Bill 101;

"Therefore, be it resolved that the Iron Bridge Night Hawks urge the government of Ontario to create a seven-day visitor trail permit for out-of-province tourists and regulate its sale in Algoma district."

That's from our club.

From the Corporation of the Municipality of Huron Shores—this is a little longer:

"Whereas the council of the Corporation of the Municipality of Huron Shores has been advised that the seven-day permit for users of the Ontario Federation of Snowmobile Clubs trails was terminated by a decision of the OFSC members at the 1999 convention; and

"Whereas it has been estimated that 48% of all seven-day permits were sold in this snowmobile region; and

"Whereas this council feels strongly that the termination of the seven-day permit will have a serious negative impact on the local entrepreneurs that depend on the winter tourist influx generated by the seven-day permit;

"Now therefore be it resolved that the council of the Corporation of the Municipality of Huron Shores requests that the Ontario Federation of Snowmobile Clubs reconsider termination of the permit."

They forwarded that to the Honourable Cam Jackson, the Minister of Tourism; the Minister of Northern Development and Mines; the Minister of Transportation; Mr Spina; our local MPP; and all the clubs in our area.

As you can see, I think it's safe to say we're all concerned about it. How it gets resolved is less important to



us than that we do something that makes sure we still have tourists in five years.

**The Chair:** Thank you. That leaves us time for about two minutes per caucus. Mr Bisson, we'll start with you this time.

**Mr Bisson:** I have two different areas I want to cover. First of all, of the snowmobile trade that you did in February just in your area, what percentage was non-local trade?

**Mr Brown:** In the motel numbers, it is almost all non-local.

**Mr Bisson:** What I was getting at is that the restaurant trade—people stop to buy fuel, food and all that.

**Mr Brown:** In the restaurants, we'd have to subtract the people from out of town, but as I said, in the motels that's almost entirely Michigan, Ohio. That's almost entirely American. In the restaurants, I would say you're looking at about half Ontario and the rest being money from out of the province. Of the Ontario money, I think it's important to realize, especially in southern Ontario, that money is really local. That's northern Ontario money. It's not people from Toronto. Last year I think I served one table of snowmobilers from Toronto—six people—in the two months we had snow.

**Mr Bisson:** The people from out of province who were that part of the business, did you hear a lot of complaints from them in regard to the price of the permit, or did they accept it? There's the issue of the seven-day permit and then there's the issue of cost.

**Mr Brown:** The cost is there and it's definitely an issue. They had already heard—and I'm sure you're aware—that the federation in negotiating with the government had proposed a \$300 permit for out-of-province people. That information was already in the hands of Michigan people last winter. Some people, when we approached them at the two snowmobile conventions last October and November, thought we had already moved to that.

**Mr Bisson:** You're advocating, then, that the government be more involved in setting the price and the seven days. You're completely opposite to the clubs here.

**Mr Brown:** Yes. Our club feels that there needs to be—if it has to come from the government, we feel it's not coming from the OFSC.

**Mr Hastings:** I have one question for you. Should this bill specifically mandate a specified time frame—one day, seven days, 30 days, seasonal, that sort of arrangement—right in the bill?

**Mr Brown:** Certainly if not in the bill, in the regulations.

**Mr Hastings:** OK. And when did you say you're going to this show?

**Mr Brown:** October and November.

**Mr Hastings:** In Sault, Michigan, or—

**Mr Brown:** In Grand Rapids, Michigan, in Detroit and in Chicago.

**Mr Hastings:** So you need an answer.

**Mr Spina:** Greg, thanks very much for making the trek without a snowmobile. You did the opposite of what

I did. I was born and raised in the Soo and moved to southern Ontario but missed the north terribly.

You brought forward a very specific point, which is probably one of the reasons why the Ministry of Tourism is involved in this whole exercise to begin with. With the phenomenal impact of the industry economically, we found it difficult to attract tourists, just as the federation and its member clubs found it difficult to provide a system for guests when they really weren't contributing a lot to it, other than some of the permit fees. Do you think there might be other alternatives besides the permit fee that would assist towards the maintenance of the trail and towards keeping the cost of permits low enough to be attractive to the tourists?

**Mr Brown:** I think you have to look at the whole package. My little company—we just built a huge bridge in Iron Bridge, of which I'm sure you're aware, across the Mississagi River. We donated \$500 to that this year. I think it's safe to say most of the businesses—not all, and I think you'll never get all; that's the reality of donations—are involved in some way. If tourism diminishes, and I'm talking about out-of-province tourism, you're going to see our involvement and our donations to the club diminish, because financially it won't be as worthwhile for us to stay open in the middle of winter.

I think you have to somehow examine what the reality is of the donation level of businesses to clubs, what that relationship is. There are ways of doing it. In my little business we sold 25 permits last year, which wasn't a lot. There are businesses that sell way more than that. Some amount of money per permit—I know in Wawa they do something really creative with the businesses. There is some kind of levy or something that they do. So I think there are creative ways of finding a solution to helping finance, and helping the businesses who prosper from it do it, whether it's a tax break, whether it's a donation. Donation receipts, of course, come from the federal government, so it's a different reality. I don't think you want to necessarily put the onus on the visitor. I think maybe the onus needs to go on us.

**Mr Levac:** Just a quick question and a clarification to the clerk: Did we have copies of the resolution presented or should we get those from Mr Brown?

**Mr Brown:** I'll forward them to the clerk.

**Mr Levac:** Thank you, Mr Brown, and I appreciate your presentation, obviously from the perspective of small business and new to the industry, but trying to learn as much as you can in a very short period of time.

I guess what I heard that permeates through the entire presentation is discussion and dialogue regarding the seven-day permit. I've been led to believe by some people in discussion that the seven-day permit for some people represents 15 days. There's a concern that was raised that some people are buying a three-day, five-day, seven-day, whatever it is, and then they just extend that and say, "I'm here and I'm going to use it." Would you recommend any kind of system that would verify the use through organizations such as yourself or inns or people who have access? These people are staying for a week and yet they're snowmobiling for 15 days on the trail.



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**Mr Brown:** I didn't experience that myself first-hand, but I'm sure there's a way to come up with that in that innkeepers check the permits when they check people in. Often the case is that people come, and what we've found is that they buy the permit when they cross the border. So they often buy it in the Soo when they cross the border, and they stay in the Soo one night, and then they go out on the trail or they trailer down to Iron Bridge or Blind River or wherever and buy there. I'm sure there are ways of checking it. Also, the STOP officers and the wardens hopefully are checking that as well.

**Mr Levac:** I had just been made aware of it, so I thought I'd put it out there.

**Mr Brown:** I hadn't heard of it last year at all in our area, but there are people who do use the trails without permits.

**Mr Levac:** Sure. Do I have time for quick one? I'll make it quick, Mr Chairman, I promise.

You mentioned the \$10 seasonal permit in Michigan. How can they possibly do that?

**Mr Brown:** As my predecessor was saying, there are gas rebates and other things that finance the trails. It's financed out of tax dollars not out of permit fees, and that's the seasonal permit fee in Michigan.

**Mr Levac:** What we're hearing is that the OFSC is advocating user-pay, and if we're going to start getting into this other process, we're going to have to actually change that philosophy a little bit in order to accommodate what you're talking about.

**Mr Brown:** I think you have to look at user-pay in the sense that if someone was coming for five days, are they using the trails to the same extent as some of us who can use them for four months? Is that user-pay? If you use the trails for five days out of a 100-day season and I can use the trails for 100 days of that—

**Mr Levac:** I really have to clarify something. You're not advocating, though, that the out-of-province people get exempted from any kind of fee?

**Mr Brown:** No, no. I think they should pay a fee. I think it needs to be a reasonable fee. I don't think we want to eliminate the fee, and I don't think we want to charge them triple or double.

**The Chair:** Thank you for your input, Mr Brown. We appreciate your driving all the way down here today.

Our next presentation will be, if they are here—I don't think the clerk has spoken to them yet—the Near North Trail Association. Is there a representative from them yet? How about Mr Tom Day?

#### DWIGHT-DORSET TRAPPERS COUNCIL

**The Chair:** I am told that the Dwight-Dorset Trappers Council are here, so if they don't mind coming forward now, we would appreciate their filling the void. Good afternoon and welcome to the committee.

**Mr Frank LeFeuvre:** I'm not sure what the protocol is.

**The Chair:** Normally you would just introduce yourself for the purpose of Hansard. We have 20 minutes and you can divide that as you see fit between your presentation or allowing time for questions and answers.

**Mr LeFeuvre:** Fine. My name is Frank LeFeuvre. I am presently the president of the Dwight-Dorset Trappers Council. I am a new resident to the Muskoka area, having lived here only eight years, and have retired from Wawa, Ontario. I'm quite aware of the snow conditions and the trail conditions in Wawa.

As the president of the Dwight-Dorset Trappers Council, I have the opportunity to receive memos from our Ontario Fur Managers Federation, two of which were dated August 1 and August 4. They outlined to me—and this was the first knowledge that I had and anyone on our council had—that there were going to be hearings on snowmobile trail fees for trappers. In phoning a number of trappers in the area, they were shocked, and they asked me, if I had time, would I please come and pass on our concerns.

I hope I do not become too negative, because as I get older—I'm not sure if you agree with me—I'm becoming more ticked off with the government than I ever was when I was younger. I probably didn't have enough time to think about the government and I just followed along.

The memo also stated that there were only five hearings in all of Ontario for this very important type of activity. This, too, was a surprise. I was under the impression, and many of my fellow trappers were under the impression that the new business relationship that was set in June 1997 between the trappers of Ontario, which was labelled the Ontario Fur Managers Federation, and the province of Ontario, was one of co-operation and openness. The quiet process—and this is my term—which is centred around this, Bill 101, and the quick scheduling of hearings demonstrates to me and to many other trappers that this is neither co-operation nor openness.

Even the hearing that was scheduled for Gravenhurst was changed to Bala without any public notice, to my knowledge. To people in Muskoka, there is quite a difference between Gravenhurst and Bala. It's like saying Huntsville and North Bay.

**Mr Bisson:** Or Peawanuck and Moosonee.

**Mr LeFeuvre:** That's correct. I refer to this type of process as a smokescreen. Really and truly the government is showing that they want input from the general public, but if they don't publicize it too well and they keep the information to the general public very quiet, they really demonstrate to me they're not interested in getting information from taxpayers. They're not inviting them to really participate, so why request their involvement?

It has been the belief of trappers for many years that the Ontario fur program should pay its own way. Following the creation of the business relationship with the government in June 1997, trappers were very accepting when the licence fees for trapping were increased by 400% and the royalties paid on the gross value of wild fur were increased by 10%. You may not be aware, but



not all provinces in Canada collect royalties on the sale of wild fur, but of those that do, Ontario's royalties are the highest.

Speculation in our town and hearsay information state that there is a decline in the purchase of snowmobile permits and use of the OFSC trails. Is it fair to expect trappers to pay the way for recreational snowmobilers? I really don't think so, and these are the reasons that I would quote.

Many of the trails were created by trappers in the first place, loggers and ice fishermen, and for years they were maintained by trappers, loggers and ice fishermen, and probably in the last 20 years, after the 1970s, the Ministry of Natural Resources became a little bit more involved. Most, if not all, of the bush trails before the Ontario federation of snowmobilers came to be were, as I mentioned, maintained by the trappers, hunters and the ice fishermen.

Most trappers reside on or near their traplines. They made decisions, very important decisions for their life-style, to select a way of life and a permanent residence that enables them and their families—and families are very important to trappers when it comes to their way of life—to interact with the natural environment on a daily basis. Most snowmobilers are visitors. Visitors are good, but should we continue to make decisions on behalf of visitors versus the resident population of our province?

Trapping is a family tradition and Muskoka's heritage has been enriched by this continuity. Even today, Muskoka can boast of three and four active generations of trappers. How many of you can say that in your family you have three and four generations of active politicians—

**Mr Bisson:** I hope not.

**Mr LeFeuvre:** Me too.

**Mr Spina:** Ted Chudleigh.

**Mr LeFeuvre:** —or car dealer salesmen, or business administrators, or truck drivers? But in Muskoka there are three and four active generations of trappers at the present time.

There was a little something from the National Post, if I can find it, that was printed in a magazine that I got. It was by Donna Laframboise:

"We teach school children that Canada is a nation in which cultural tradition is valued and encouraged, but rural and semi-rural residents know better. Although they are a significant minority group in their own right, their distinct cultural heritage is rarely considered legitimate. Rather than being respected, their traditions are dismissed and denigrated by city dwellers who wouldn't know a hawthorn tree from a silver birch."

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I think that is very fitting, because people who have chosen small rural community living and do like to do things that help them get back to nature are being controlled by 40-storey buildings. They're being controlled by the asphalt jungle. As a person who was raised in Toronto, at Broadview and Gerrard, I know the asphalt jungle, but I too made conscious decisions to get out of

that hellhole and go someplace else and try to enjoy my life. I am doing that, both for my occupational period of time and, now that I'm retired, for this next stage of my life. Part of that, and it's very important to me, is being a trapper.

Most of the trappers in our province operate a marginal business, therefore additional fees are unfair and punitive. We have increased our licenses by 400%; the government has increased the royalties on gross fur sales by 10%. How much more can you place on the shoulders of the trappers, truly the founding industry of our country?

The creation of the elaborate trail system has placed additional finance hardships on many trappers—and I never realized this until I moved to Huntsville from Wawa—stolen traps; animals released, because it's still legal to capture an animal live before you dispatch it or release it; animals stolen right from traps, and when the snow is on the ground you can certainly tell that; and damaged sets. It takes energy on behalf of a trapper to create a set to capture a wild animal. When you come along and you see these smashed off the trees, or people may have jumped on them—in some cases it almost looks like they've been run over by a vehicle, but when they're in the bush with lots of trees around, they have to be just smashed by people. I found this experience has been common for me only when there is snow on the ground and after the trails have been groomed. So this additional expense causes me to lose more. So you are saying that trappers should pay more by paying a snowmobile trail fee? I have 29,000 acres that I'm responsible for on a registered line. A strip two and a quarter miles long on that trap line is snowmobile trail. You want me to pay? There are some trappers who don't have any federation snowmobile trails on their traplines. You want them to pay?

**Mr Spina:** No.

**Mr LeFeuvre:** Good.

If the government is truly interested in improving the sustainability and safety of Ontario snowmobile trails, they should do what needs to be done in all areas of government. They must be more efficient. They must follow through with the regulations that are presently in place. If you don't enforce them, nothing gets done. Speed on snowmobile trails in Muskoka, from what I hear, is a real problem. You can just count up the deaths. If a person combines his or her snow machine with a tree, 99.99% it's just speed. How do you reduce speed? You have the regulations. Get the enforcement going and things will be improved, in my opinion.

I'd like to just finish off with another statement from Donna Laframboise in reference to life in the bush: "Where I come from, fishing, hunting and trapping are an integral way of life that has been passed down through the generations. The log cabins from which ducks, partridge, moose, marten, fisher, and beaver have been hunted or gathered for decades aren't just somewhere to unroll a sleeping bag. They're places where rights of passage from adolescence into adulthood occur, where



people of modest means and humble dreams commune with nature and nurture their spiritual selves."

I've had the good fortune to have my children and grandchildren get a start in this, and I hope that, through expense, I have the opportunity to continue. The Dwight-Dorset trappers are very much against having to pay another fee.

I'll give you a barbershop scenario. Last Friday, I'm sitting in the barber chair. In the next chair to me a gentleman's almost finished. The barbers know that I trap and they ask me how things are going. I say, "Fine. We have the problem now that they're wanting us to pay snowmobile fees, and hardly any trapper that I know of uses an OFSC snowmobile trail." The gentleman in the other chair says, "Oh, you don't have to worry about that any more. Trappers aren't going to have to pay that fee." Oh, the dandruff just—you talk about increasing a person's temperature. You get trappers concerned and the general public concerned about a thing—and this is what I call the smokescreen method. You get us concerned. We get late notices about it, we try to stand up for our rights and do something, and then I'm told in a barbershop by a guy sitting over here who's the president of the local snowmobile club that we're not going to have to pay. Communication is still probably the greatest problem of the human animal. Thank you.

**The Chair:** Thank you, Mr LeFeuvre. I certainly wouldn't disagree with your last comment.

Just in defence of the clerk and the process, I want to let you know that an ad was placed in every single daily newspaper in the province of Ontario, as far south as London. In deference to the climate, we excused the clerk from putting one in in St Thomas, Sarnia and Windsor. Every other newspaper in the province of Ontario got an ad. All the weeklies in the north got an ad. It has run continuously every few minutes on the parliamentary channel to every home in the province with cable TV. It is on the Internet. Certainly all the traditional contributors to this process—the snowmobile federations, the trappers, the fur managers' council—have been involved from day one. It was ordered out of the Legislature on June 25, so it's been no secret it would come here. On your point about Gravenhurst, I can tell you there's no conspiracy there. There was absolutely no meeting rooms available in any of the inns closer to Gravenhurst, and the clerk was able to locate this one. But having put out an ad saying we'd be in Muskoka, we'd certainly endeavour to keep as close as possible. I can assure you that it is our intention to get as many people in.

You may not have been in the room a little earlier when we described the difference between first reading and second reading hearings, but at this stage we have two kicks at the can. This is only about the fourth bill in the history of the Legislature that's had hearings after only the introduction of the bill. So none of the parties have had to take hard and fast positions. The bill itself is really almost a blank slate and we can write on it as the three parties wish. I think Mr Spina, who will be starting off the questioning—we have time for very quick ques-

tions from each caucus—may wish to comment further about the rest of the process you had some concerns about.

**Mr LeFeuvre:** If I may just take 10 seconds, there wasn't one trapper in our council who recalls seeing anything in any of our local papers.

**The Chair:** I would be more than happy to get you the date that it ran.

**Mr LeFeuvre:** I'd appreciate that.

**The Chair:** Which paper?

**Mr LeFeuvre:** The Huntsville Forester.

**The Chair:** We'll double-check. It's a media booking service that you use and it costs about \$25,000 every time we place one advertisement, so I assure you that, on behalf of the taxpayers, we're as concerned as you are if that's not being done. But I appreciate you doing that. We'll get that information back to you.

**Mr Spina:** Mr LeFeuvre, thank you for coming forward today, I guess in your perception certainly on short notice, but in time to have gotten in on the deadline. I don't have to dwell on what the Chair has explained to you regarding the process. The trappers council of Ontario was on our list to be notified when we were going to public hearings. When this whole process was being set up, during the initial consultation paper, an informal, open document was sent around the province which people were permitted to reproduce and share with any organization that they felt should be aware of the discussions and the consultation process—at that time we heard back from fur trappers and the council, we heard back from anglers and hunters, and as a result of the input from those organizations, section 9 of the bill amends section 26 of the Motorized Snow Vehicles Act. It says—and please ask me to clarify it if you wish—that regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or its regulations. Regulations may also be made general or particular, and different classes of persons may be identified for exemptions from the act or its regulations.

So what we did—and this is existing in the bill now—was allow the opportunity in the bill to empower and identify any individuals or classes of motorized snow vehicles to be exempted from the process. It was never the intention of this government in this bill to impose an additional fee on trappers or anybody else. The only objective here was to have the recreational users of the snowmobile trail system pay for their fair share of the system. Trappers, for the most part, were already exempted under the OFSC through other agreements.

I can assure you that the Ministry of Natural Resources is at each and every table meeting with the government ministries to ensure that the open access to crown land is preserved under the policies of this government and of the Canadian government, and I can assure you, sir, that the man from the snowmobile club in the barbershop was right.

**Mr LeFeuvre:** Good. Thank you.

**Mr Spina:** Thank you for your time. We appreciate it.



**Mr LeFeuvre:** I have some people who, when they get the phone survey shortly, starting tonight, will be very pleased, and we'll make sure they don't take their chainsaws into the bush in a very active fashion unless they wish to clear a trail.

**Mr Spina:** By the way, regarding five days of committee hearings, there has been a representative from each of your districts, in fact more than one. So in Kenora, Thunder Bay and Timmins today and in fact I believe also on Friday in Peterborough, at all five sites there have been and will be presentations from fur trappers. We welcome your input and thank you.

**The Chair:** Certainly we've gone a bit over, but it's my understanding that the next group is not here yet. Mr Levac?

**Mr Levac:** Mr LeFeuvre, I appreciate the passion in your comments and I've listened very carefully to them. So that you're aware, in previous presentations I heard from people who support the position you're taking for the trappers. They said that they don't have a problem at all with traditional user groups using the trails and they welcome that opportunity to continue the ongoing dialogue, which I think is just as important, if not more important than it is for the dialogue with the government, because you guys are actually using the trails. So just a comment from me. Thank you very much.

**The Chair:** Mr Bisson.

**Mr Bisson:** I'm not going to repeat everything that was said, but the committee did hear loud and clear back at the beginning of this process that we've instructed the legislative people to take a look at how we can further clarify the bill so that people don't get that impression. Hopefully, that will be done.

**The Chair:** Thank you, Mr LeFeuvre. It may sound trite, but even having it reinforced is a very valuable part of this exercise, so I do appreciate your taking the time to come before us here today.

**Mr LeFeuvre:** Thanks for your time.

**The Chair:** Let's start back at the 3 o'clock group. Is there anyone yet from the Near North Trail Association? Mr Tom Day? The Snowmobiler Television? Mr Robert List?

**Mr Bisson:** And "to be advised."

**The Chair:** I can tell you Mr To-be-advised will not be with us this afternoon. But the clerk informs me that in phoning back to the various offices—for example, Mr Lange left Barrie at 10 to 2. So why don't we call a 15-minute recess and hope that one or more of the groups is in attendance by then. I ask everyone's indulgence. Thank you.

*The committee recessed from 1514 to 1534.*

#### NEAR NORTH TRAIL ASSOCIATION

**The Chair:** I call the committee back to order. Our next presenters are from the Near North Trail Association. I invite them to come forward to the witness table. Good afternoon, and welcome to the committee.

**Mr Graham Whitwell:** Good afternoon. First off, let me apologize for being a little tardy. I didn't get lost. It's just one of those days where, as a volunteer, sometimes my real job gets in the way of my passion, which is my volunteering.

Members of the panel, my name is Graham Whitwell, and today I represent the Near North Trail Association. We're an association of 12 individual snowmobile clubs who make up district 11 of the Ontario Federation of Snowmobile Clubs, or the OFSC. Our district stretches from Kearney in the south to Temagami in the north, Mattawa in the east to the French River area at Highway 69 in the west. We represent a membership of about 8,000, and our member clubs maintain a trail system comprising 3,745 kilometres.

Let me take this opportunity to thank the government of Ontario for their support and their interest in snowmobiling. I would also like to thank this committee for allowing me an opportunity to speak. My purpose today is to speak in favour of mandatory OFSC trail permits. The OFSC has taken the position that there are four cornerstones essential to making a mandatory OFSC permit successful. I agree with these four cornerstones as follows:

(1) The final authority on all matters and processes relating to mandatory permits must remain with the OFSC, especially the use of permit revenues.

(2) The OFSC mandatory permit must be an absolute and easily enforceable requirement on designated OFSC trails.

(3) Reasonable accommodation must be made for traditional access on crown land.

(4) Trained OFSC wardens must have the authority under the Motorized Snow Vehicle Act to enforce mandatory OFSC permits.

A little background: In 1972, something happened that would eventually reshape my life and that of my whole family. My father purchased his first snowmobile and introduced the family to snowmobiling. He owned a resort camp with eight cottages near Burk's Falls, but closed down every Labour Day, not to reopen until the following May 24. In fact, he transplanted the family to southern Ontario every year for employment during that time period. The people who ran other nearby camps would seek out part-time employment nearby to see them through the winters. Periodically, we trekked up to the camp to snowmobile on lakes and back roads, oblivious to the dangers lurking there.

In 1974, a small local club was formed that would later become the Almaguin District Snowmobile Club. We joined right away for the social aspect and the chance to expand our riding on winding bush trails. We considered the \$10 annual fee to be a bargain. We didn't use buzzwords like "user-pay" back then, but we recognized that its genius was in its simplicity: "If you use it, pay your share." All across Ontario, community snowmobile clubs for the recreational enjoyment of their family members were developing local snowmobile trails. There



would not be 49,000 kilometres of snowmobile trails in Ontario today if volunteers had not built and linked them.

In some cases, new trails were literally carved out of the bush; in others, existing old logging trails were used as a good basis, but usually required extensive upgrading. One thing is for certain: Without local volunteers and their personal relationships, many trails across private lands would be inconceivable.

In 1989, an employment transfer provided my family and me the chance to relocate to snowmobile heaven—that's just outside Burk's Falls. It also afforded us the opportunity, through volunteering, to donate something tangible back to the sport we had loved at that point for 15 years. Volunteers wear so many hats: trail building, trail grooming, fundraising, writing newsletters, answering correspondence and attending meeting after meeting all year long. Volunteers invest countless hours of their personal time because they believe snowmobile trails constitute a valuable community resource that provides recreational, social, health and economic benefits to their region during a traditionally dormant season.

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My own teenagers were among those who found seasonal part-time employment related directly to the existence of volunteer-built snowmobile trails in our community. As an instructor of the OFSC snowmobile driver training course, I utilize a meeting room donated by the local firefighters. We in turn donate to their pumper fund annually. People like Easter Seals and the children's Sunshine Foundation are recipients of charity fundraising by clubs within the Near North Trail Association. These local partnerships are important to a local community.

There are 281 community snowmobile clubs in Ontario, formed as not-for-profit groups with a mandate to invest their revenues on snowmobile trails. Their sole existence is to provide snowmobile trails. The OFSC acts as their supporting and co-ordinating body to establish a provincial trail network and to represent their provincial interests.

The OFSC itself is a non-profit organization with volunteers elected from these clubs to drive the OFSC from the bottom up. In spite of the fact that the OFSC is the largest and most successful recreational trail user organization in the world, this volunteer involvement ensures that it is in tune with the grassroots needs and issues. To continue this success and to keep the trails open and operating, it is imperative that OFSC clubs and volunteers continue to play the lead role in controlling their own destiny. One of the fundamental vehicles for this self-determination is the OFSC trail permit and the allocation of its funds. A \$10 fee was fairly simple to allocate back in 1974 since the trail groomer consisted of a used bed frame towed behind a volunteer's snowmobile. But, as they say, that was then, this is now.

Snowmobile clubs throughout the Near North trail district maintain a busy schedule of events ranging from poker runs to pancake breakfasts to hootenannies. Are these events necessary or are they just social perks? Out

of necessity, most clubs are operated as small businesses, with less emphasis now on the social aspect. Every year seems to bring increased competition for fundraising dollars. Informal discussions with our Near North member clubs indicate that the costs associated with putting on these events are increasing every year while the net proceeds are decreasing. Volunteer burnout is a reality, with fewer volunteers per club and an older average age of those typical volunteers. In other words, we wouldn't do it if we didn't need the money because it's getting harder to do.

If user-pay works, why are additional funds required? Actually, user-pay has only half worked. User-pay revenues have only accounted on average for about 50% of the total average annual cost of recreational trails in Ontario, at least the operating costs of those trails. The balance has traditionally been made up by club volunteers through donations of time, labour and resources and through fundraising.

The key point here, though, is that snowmobile riding habits have changed. Very few riders purchase an OFSC trail pass and ride solely within the confines of the club from which it was purchased. There are several reasons for this. Snowmobiles are more reliable. A friend of mine jokes that the biggest difference between old sleds and new sleds is that now when they break down you're a lot further away from home. Snowmobile clothing and accessories are more comfortable and have made the pastime more comfortable. Very importantly, trail and trail linkages are vastly improved. More accommodations are catering to snowmobilers. More of the people I was speaking of earlier who traditionally closed are remaining open and providing employment. Baby boomers have more time to ride than people used to.

In addition to the average recreational rider riding further each day, the phenomenon of the touring snowmobiler has increased exponentially for many of these same reasons. The touring snowmobiler is considered a prime potential customer to tourism operators because he only has sufficient cargo space on his snowmobile to carry his wallet. The down side, though, is that he may ride through numerous clubs even in a given day, causing resulting wear and tear but without actually stopping to contribute to the local trail upkeep on his way through.

The phenomenon of longer-distance riders presents trail maintainers with challenges they have worked hard to address. Near North clubs recognize the advantage of large, new industrial grooming equipment and improved trail bed surfaces with larger bridges etc. With this in mind, every effort has been made by Near North clubs to maximize the impact of the Sno-TRAC program and the Safe Smooth Trails programs.

However, as beneficial as these capital equipment partnerships are, the required matching capital had to come from operation budgets in some form. Budgets? Yes, it's not unusual for clubs to establish annual budgets and track their actual-versus-budget performance monthly. NNTA clubs also demonstrated fiscal responsibility by sourcing certain services collectively through a



tendering process. But the bottom line is that in spite of all the knowledge gleaned over 30 years of trail-building and maintenance and in spite of the state-of-the-art grooming equipment we have in place, volunteers are frustrated trying to maintain a world-class tourism trail system with a local recreation trail budget.

What would make user-pay work better? We believe the most important issue facing NNTA member clubs with regard to long-term sustainability is ongoing operational funding. Since OFSC permit sales constitute the bulk of operating capital generation, it is prudent to do everything possible to ensure that all recreational riders on OFSC trails contribute their fair share through the purchase of an OFSC trail permit.

Further, we believe this must be enforceable if it is to have the desired effect and that a sufficient number of enforcement officers be empowered to provide adequate patrol coverage. The NNTA welcomes the opportunity to partner with all Ontario enforcement agencies. In fact, we were the second district in Ontario to embrace the STOP program and we continue to provide financial support and patrol our OFSC trail wardens with the STOP officers. However, the effectiveness of police, STOP and conservation authority may be limited by limited manpower and equipment. Trained OFSC wardens can enhance this coverage with local sensitivity.

Paul Fowler, this fellow I know, has a trapline north-east of Burks Falls. He doesn't eat pemmican or live in a one-room log cabin. In fact, he's a respected teacher with the Near North school board. On the street he looks just like everyone else, but when he's criss-crossing groomed snowmobile trails in his green duck parka and his long track Tundra snowmobile, he could hardly be mistaken for a recreational snowmobiler. The Almaguin District Snowmobile Club and Paul Fowler have maintained a mutually respectful relationship on crown land for as long as I can remember. We're adamant in our belief that every recreational snowmobiler should pay their fair share, but we're respectful of the rights of other users of crown land. Perhaps a local limited-use permit could be issued to easily recognize users such as landowners, anglers, hunters or others who may qualify for local exemptions to ride specific trails to their area of primary activity. Once again, local sensitivity with respect to enforcement would be advantageous.

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In conclusion, let me emphasize that, as snowmobiling volunteers, we're fiercely proud of our accomplishments in organized snowmobiling over a relatively short period. We believe that our interconnected province-wide trail system is world-class and second to none and that we have demonstrated responsibility with respect to safety, environmental issues and democratic self-government. Operational shortfalls are the result of success and the popularity of snowmobiling as a recreation and as a tourism activity in Ontario and must be addressed immediately if the sport is to continue and grow. The provincial government of Ontario can support this growth by legislating mandatory OFSC trail permits which will

continue to be the sole function and responsibility of the OFSC and enforceable on all OFSC trails by all enforcement agencies, including the OFSC wardens.

Thank you very much for this opportunity to address the committee. I'd be pleased to attempt to answer any questions.

**The Chair:** Given the cancellations we've had, we'll certainly allow for questions from each caucus. This time we will be starting with Mr Levac.

**Mr Levac:** Thanks very much for your presentation; I appreciate it. I guess a quick question from me right now is, I've heard several presentations that say that the mandatory permits are something that's going to help us get the funds back into the system again. What percentage of those people do not use the permit system? Does anyone have any idea?

**Mr Whitwell:** I'm afraid I don't have that sort of information. That would probably be better directed to a representative of the OFSC. I'm afraid I can't answer that.

**Mr Levac:** It wasn't meant to trap you or anything, it was just that something's starting to click in my head as to, how much money are we going to generate if we're able to get everybody to subscribe to the permit process and will that be the kind of saving grace that's being looked for, in terms of the amount of money? Or are we also talking about, which has also been mentioned with other groups, an add-on kind of supplementary income process somewhere along the line? Would you agree that there's probably need beyond the permit process in order to get the industry—

**Mr Whitwell:** I would be speculating, but in my opinion, yes.

**Mr Levac:** Basically, in a nutshell, the legislation is supportable as long as the OFSC is the permit provider and enforcement and it gets the fees.

**Mr Whitwell:** We think we've done a great job. We think the system works and it's a system that will continue to work.

**Mr Levac:** So there shouldn't be anything in the legislation that removes what you've been doing for 30 years.

**Mr Whitwell:** Exactly.

**Mr Bisson:** I have somewhat the same question as my colleague. I'm trying to figure out who doesn't pay currently who is using OFSC trails. I know I've participated as a provincial member in my riding where they have, on particular days, the OPP out there with OFSC officials stopping people—you know, friendly reminders, making sure they've got trail permits. It's been my experience that the vast majority of people who use trails have permits. On the couple of Sundays that I've done it, I can only remember one particular occasion where there was a youngster using an unregistered machine; that was the only case.

I wonder, as you do, where we are really going. The issue is, to me, that the clubs need more money in order to keep the trails maintained and to do the kind of expansion we need to promote the sport. I'm wondering



if this is really the way to go about it, because nobody has quantified to me exactly how much more money this is going to give the clubs. What I'm hearing you say and what others say is that we need some sort of funding mechanism. This is just a general comment.

Just so you know where some of us are starting to come from on this thing, I don't oppose in principle what we're trying to do here by way of legislation, but I'm wondering if we're going to get to where we go. The other part is, it seems to me part of the issue here is internal to the OFSC, the federation itself, in regard to internal policies of how we move dollars from clubs that do very well, thank you, to clubs that don't do so well because they have smaller memberships and, as other people and yourself have pointed out, long distance traveller who go—for example, my club, which is a big club—into Fauquier and other communities where there aren't a lot of riders. Do you see the will within the various clubs and at the federation level to try to address how we better support, by internal policies of the federation, those clubs under 100 members? Is there the political will to do it?

**Mr Whitwell:** Again, I'm not really the proper person to respond to that, but I think a good general answer is yes. As a matter of fact, there are items that will be discussed at the OFSC AGM, which is in September, that will address that very topic.

**Mr Bisson:** It might be interesting to go to that, because I wonder, sometimes, if we utilize the power of the Legislature to try to regulate something that we can actually do by volunteerism and that can be done by associations themselves. I think, Joe, you know where I'm coming from. Some of this stuff is internal to the federation.

I have a question of the parliamentary assistant about something I don't understand that I should have understood by now. Are we going to be giving wardens, such as the presenter who came here before, the ability to actually stop somebody without a permit and then charge them?

**Mr Spina:** At this point, the only ones who are empowered to enforce the act, such as it is, and introduced, are the police. A STOP officer is considered in that category because they are sworn special constables even though they are volunteers; but the wardens are not. This is one of the reasons why there is repetitive lobbying, if you will, to include wardens as part of the enforcement process.

**Mr Bisson:** I raised it because I wonder, as a legislator and also as a taxpayer—in the end I don't think the government is going to give the wardens the ability to actually go out and enforce, because there's a whole bunch of issues here. What happens if the person refuses? What's the remedy on the part of the warden? Does he have the right to arrest? Does he have the right to seize? There are all those issues that you get into. I'm not so sure the government wants to go there. I'm not sure I'd want to go there.

So the policy issue for the government is do, we have enough police in order to do the enforcement of what is

basically a registration fee and, quite frankly, is that what we want our police to be doing? I'd just appreciate your comments, if you can, on that. I know it's a bit of a loaded question, but I wonder if we're maybe coming at this a little bit from the wrong direction. I think, to give credit to the government, they're trying to find a response to a real problem, and I give you full credit for that. That's what these hearings are all about. But I'm wondering if we're actually going in the right direction now. As I listen to more and more presenters, more and more questions are raised in my mind. I wonder if you can comment on that.

**Mr Whitwell:** If I might just comment briefly on the issue of non-conformance, it's been our experience in the near north area that the transient snowmobiler or snowmobiler from southern Ontario is most likely not the problem. It's been our experience that the problem tends to be more local and it becomes a bit of a game, sometimes, with some of the locals, especially the younger people in that they'll ride around until they're caught. If I can just go back in my presentation to where I spoke briefly about volunteer burnout and the fact that we have fewer and fewer volunteers, the whole idea of having to chase these kids around is something that takes important time and effort away from positive things that we could be doing.

**Mr Spina:** Graham, thanks for coming. I think we met sometime on one of my little trail rides in your area. I wanted to ask you, and it's not too dissimilar from Gilles's question—I guess from the perspective of an instructor of the driver training program there are elements of this bill that talk about the enforcement not just of the trail permit but also of other elements that would be demanded, if you will, of the rider on the trail in order to be in compliance. I don't know whether you're familiar enough with some of those things that were outlined in the act to comment on them.

1600

**Mr Whitwell:** I'm afraid I'm not completely familiar with the entire act.

**Mr Spina:** Let me summarize it in one statement, and maybe it's too general: elements of the enforcement tie infractions under the snowmobile act more closely to the Highway Traffic Act, so offences that you would be charged for as an individual under the Highway Traffic Act for your licence would also be in effect in driving a snowmobile if you're driving under suspension. Some of that is still in place now, but it's not really all that enforceable because police enforce it. If you're driving with a suspended driver's licence, you've got to be caught by a cop; but if you have a suspended automobile driver's licence and you're riding around on the trail, generally speaking, even if a warden pulls you over and asks you for a driver's licence and sees that it was suspended, I'm not sure there's anything they can do.

**Mr Whitwell:** Not a warden, no.

**Mr Spina:** What about a STOP officer? Do you know whether they can?



**Mr Whitwell:** No. Unfortunately, I guess I'd have to research a specific infraction in order to really answer that.

**Mr Spina:** That's OK. I didn't mean to put you on the spot.

Would you agree—are these positive changes in that context?

**Mr Whitwell:** I believe—yes. Snowmobiling for myself and my family is exactly that: a family event. It has always been that way. Our kids have ridden with us on snowmobiles since before they could walk and, as soon as possible, attended the course, received their snowmobile operators' licences and got their own snowmobiles. That's an expensive way to live, but we thought it was very important in terms of family values. Anything that enhances the safety of my family operating a snowmobile I most definitely would be in favour of.

**Mr Spina:** Thank you very much, Graham. I appreciate it.

**The Chair:** Thank you very much for your presentation here today. We appreciate your taking the time to drive all that way down to make your comments.

**Mr Whitwell:** No problem at all. Again, thank you very much for the opportunity.

**The Chair:** Our pleasure.

#### ROBERT LIST

**The Chair:** Our final presentation today, because of some cancellations, will be Mr Robert List. Good afternoon, Mr List. Welcome to the committee.

**Mr Robert List:** Thank you very much, Mr Chairman, for the opportunity to appear, and special thanks to the clerk for the assistance in putting me on at the time of the day that didn't louse up my business day entirely.

I'd like to do this fairly informally in terms of submitting comments. I have about 25 copies of my written comments so that the specifics can be reviewed by whoever is going to review these things at a later date. I'd just like to—

**The Chair:** If you like, the clerk can hand them out to the committee members.

**Mr List:** I'm not going to look at it, so I hope the committee members don't and rather just listen to what I have to say. I think it probably will have more of an impact as a verbal sense as opposed to this wonderful writing.

I appear today as an independent business person. I use snowmobiles, and in fact I use the recreational trail network without snowmobiles to access properties in my business. I'm a land use planning consultant with a degree in environmental studies. I have been practising in this area, both in the public sector and in the private sector, for about 25 years, and I have seen the growth of the trail network in this area, both for snowmobiles as well as for walking and bicycling, in particular over the last decade.

I have been involved, as well, not only in the development of snowmobile trails and the planning and actual

construction of them, but also of a number of walking trails throughout Muskoka. I can see the multi-use opportunities that are being presented to us for the years to come—right now as well as in the future—and I would like to see it continue.

My specific interest today is directed toward something that isn't in the legislation. It's what I would call an old chestnut, and some of my friends in the room today will perhaps be surprised that I am raising it before the committee. But I look upon this piece of legislation as a very good piece of legislation, because it presents an opportunity to correct some problems I have seen from a legal perspective in Ontario dealing with snowmobile trails and recreational trails.

What I would like to see in this bill is that sections 12 and 13 be renumbered so that they become the next sections after a new section 12. The section I propose—and I've written, in my language, what I believe the section should read—would deal with an opportunity that I believe we have to address a problem with road allowances on municipal property.

When I received a copy of this bill, it was entitled An Act to promote snowmobile trail sustainability and enhance safety and enforcement. I don't know too much about safety and enforcement. I see that we have safety and enforcement people here, and I'll let them speak to that. In fact, I don't know too much about the trail permit proposal that's being put forward, except that I note we may be issuing trail permits on trails that aren't legally authorized to be established in the province of Ontario. I believe that if this bill goes forward, it should address that issue directly, so that trail sustainability can be viewed not only from the trail permit perspective but from a trail securement perspective as well.

What am I talking about? Most of the trails the snowmobile people have in Ontario are located on either private or public lands. Trails that are located on private lands in particular are addressed through the landowner agreements that the snowmobile federation has with individual landowners and aren't an issue, because they have agreements with those landowners. So if we have a trail permit that is issued, you have a right to use that private property if you hold a trail permit.

Public property, on the other hand, is usually vested in either the federal or provincial governments, or municipalities. I'm not going to speak to the federal issue, because I don't know too much about it. Most of the provincial property is governed by a number of statutes; the most important one, and a prime one, would be the Public Lands Act. Under that a trail is established by the issuance of a work permit, usually through the Ministry of Natural Resources. There are other approvals that that ministry also gives.

Similarly, on public property that is owned by municipalities, where that property is a park which is not part of a road system or where it is an open road or various other forms of municipal property, the rights and the authority to use that property are clearly vested, through legislation, in the municipality to issue permits and



approvals. However, when you come to a thing called an unopened road allowance, there is a section of the Municipal Act currently in place which acts as a prohibition for municipalities to authorize the use of the establishment of trails on unopened road allowances.

This issue, quite frankly, has been discussed ad nauseam at the provincial government staff level. There has also been agreement at the staff level that it should be changed. But for reasons such as it's not a government priority or things similar to that, it has never been advanced. The most recent reason for not advancing a change in the act has been, "We're producing a new Municipal Act, and we'll take care of it in the development of the new Municipal Act."

I don't know if we will ever see a new Municipal Act. There may be some people around this table who are closer to it than I am. But since this government has been in place—and the government prior to that even agreed at a staff level with the change that needed to be made. It's just that it's awfully slow in coming. So when I see the title of this act, An Act to promote snowmobile trail sustainability, I say there's one issue that this thing certainly doesn't address, and I'm probably closer to it than anybody else involved in this business, and I'd like to see it addressed by the addition of a clause that I've outlined in this legislation. It's section 308, paragraph 5, of the Municipal Act; it's very explicit; and it says that councils may pass bylaws authorizing the use of unopened road allowances for bicycle purposes and walking purposes, and that's it. There's nothing else. If you want to put a recreational trail in for horseback riding, snowmobiling, ATVing, whatever you want to do, it is not specifically authorized.

1610

Why is this a problem? Recreational trail clubs in this particular area, and in the Grey-Bruce area of this province, have spent tens of thousands of dollars—probably more than that now—dealing with abutting or adjacent property owners who don't want to see unopened road allowances used for any kind of recreational trail purpose, whether it's snowmobiling or something else. The case law that exists dates back 130 years, mostly, on this, and this old case law generally says that you can't establish a new trail unless it's a bicycle path or a walking path.

There was an injunction request that was brought forward by a property owner that has now been dealt with successfully, where one judge said to the applicant for relief and to block the establishment of a trail on an unopened road allowance, "You don't expect me, when this matter goes to trial, to base my decision on law that was established 130 years ago, when nobody thought that road allowances would ever be used for snowmobiling or recreational trail purposes?"

So there was hope that maybe the courts might change their position, but my point to this committee is, why take the risk? Let's change the provision of the Municipal Act now—it's a very, very simple thing to do—by adding a clause to this piece of legislation that would

address, once and for all, this matter and not leave it up to the courts to make further interpretation of it. Then, if you do decide, and I hope that you do decide, to authorize at a provincial level the issuance of trail permits, those trail permits would then be available for use on properties, be they public or private, that are properly authorized to be there in the first place, as opposed to, "Gee, we've got a trail permit but the trail that's there really isn't a legal thing." I think it's a cleanup issue more than anything else, and I'd really like to see it addressed.

That's the meat of my submission. The only other thing I wanted to say is, because I'm an independent business person and I do use snowmobile trails for business, because I'm the guy who goes out to look at properties when nobody else does—when the bugs are there or when there's three feet of snow or, in the last couple of years, three inches of snow—I don't have a problem buying a trail permit, to be honest about it, because I use my machine for recreational purposes as well. But if I was solely using it only for business—and the last few years I've used it more for business than for recreational use—I don't have a problem buying a trail permit for that purpose. It's just another thing in the wonderful world of business that you have to expend and that you do diligently in terms of your business write-offs and so on, as a cost of doing business. My business may not be like other businesses, but certainly I don't take issue with that.

Mr Chairman, my submissions are brief. There's more detail in the written submission that I've put to you. There's also a whole variety of backup material, if you need it, that I can assemble and forward to the clerk's office, that deals with this issue, including the case law. I've tried to use my own terms here today, be brief about it, but it's a simple matter to address. The staff at other ministries of the government know about it, including MTO and municipal affairs, and I think it would be a simple issue to add it to this list so that we're really dealing with another matter of snowmobile trail sustainability.

Again, thank you very much for the opportunity.

**The Chair:** Thank you, Mr List. We have time for brief questions if anybody is interested. Mr Bisson, we'll start with you.

**Mr Bisson:** I just want to make sure I understand what you're asking for here. When you're referring to unopened municipal road allowances, you're not only talking about roads that were put into the official plan and set aside and not constructed, but you're also talking about existing roads, like the—I can't find the word I'm looking for.

**The Chair:** Right-of-way.

**Mr Bisson:** The right-of-way or the easement?

**Mr List:** I'm talking solely about unopened municipal road allowances. A road allowance is opened by a municipality by virtue of there being a road base on it. So if there's a road on a road allowance, nine times out of 10 it's an open road allowance. I'm saying nine times



because ownership plus maintenance equals dedication. There's a legal formula that's involved there.

What I'm talking about in this legislation—and that's really not an issue because that's dealt with as a public highway under the Public Highways Act, the Municipal Act, a whole variety of statutes to deal with that. What I'm talking about is a road allowance where there's never been a road on it. There's tens of thousands of miles of those in the province of Ontario. That's where a lot of the recreational trails, be they snowmobile trails or other trails, are being located, with the support of municipalities, with the support of trail-building associations, notwithstanding the legal problem that we have with it. They're saying, "Look, it's good business to take that trail off Jack Jones's property and put it on the road allowance because the municipality owns it, the public sector owns it; therefore there's never going to be a closure."

**Mr Bisson:** I just want to understand. So what you're saying is that they're doing it, but legally they can't be doing it.

**Mr List:** It's not authorized.

**Mr Bisson:** But they're doing it.

**Mr List:** Yes.

**Mr Bisson:** Gotcha. Any estimate of how big of the existing trail system or potential system we are talking about when we talk about these particular unopened municipal allowances?

**Mr List:** In the province of Ontario as a whole, I don't know; I guess around 25%, if not more. In the Muskoka area probably closer to just under 50%, and in the Grey-Bruce area probably something very similar.

**Mr Bisson:** Chair, can I request if somebody at the committee level can do a bit of research on that so that we can better understand when we come to the clause-by-clause?

**The Chair:** I think the researcher will probably have to get that information from the OFSC themselves, but we'll certainly—

**Ms Lorraine Luski:** To find out—

**The Chair:** What percentage of the trail system would be found on unopened road allowances.

**Mr List:** It's a high percentage.

**Mr Dunlop:** Thank you for coming, Mr List. The liability issue came up a little bit this morning with the town of Huntsville. They were concerned about liabilities on the unopened road allowances. I agree with you: there are probably thousands of kilometres of unopened road allowance through particularly this part of this region of Ontario, at the south end of the shield.

Something that I've been concerned about is the abandoned right-of-ways that have been taken over by municipal governments across the province. They've been used for recreational trails of all kinds. Do you have any comments on abandoned railway lines as opposed to unopened road allowances?

**Mr List:** My comment isn't directed toward that. Probably in 100% of the cases, an abandoned rail line would not be located on an unopened municipal road

allowance. That would be property that would probably be vested, in most cases, in an agency of the federal government. It may be private property. If it's private property, it's not an issue; if it's federal property, I'm sure there's some statutory authority for that. I don't know enough about it to make a comment.

**Mr Dunlop:** It's just that a lot of municipalities have actually purchased these road allowances for the use of recreational trails across the—

**Mr List:** If the municipalities purchased them, unless they've done a survey and unless they need it for highway purposes, it would not be an unopened municipal road allowance. It would be just another piece of municipal property that would be considered as a lineal-type park. It doesn't fall into this category. This category alludes to a legal term called an "unopened municipal road allowance" that I'm talking about, and that's where the problem is. I wouldn't imagine that there's a problem with a municipality that has purchased an old rail line.

**Mr Spina:** Thanks, Bob, for coming forward. I wanted to go to your recommended phrase here. You wanted to make it simple, so I just wondered if this would be even simpler.

It says "for setting apart and laying out so much of any highway as the council may consider expedient for the purposes of a bicycle path, footpath, or path for recreational purposes including the use of"—what I was going to suggest is dropping "motorized snow," because then it would read, "including the use of vehicles"—in other words, in general—"and for regulation of the use of such bicycle path, footpath or recreational path."

If the municipality wants to use it for a motorcycle or motocross trail, or if they want to use it for scooters or a skateboard trail—all I'm saying is that just broadens the scope and would allow them to use motorized snow vehicles if they chose. Is that workable?

1620

**Mr List:** I would respectfully disagree for two reasons, Mr Spina. Number one is, this wording was developed by a lawyer after extensive consultation with both MTO and the Ministry of Municipal Affairs people. I think there's a specific reason in there. Maybe it alludes to the second point, that a motorized snow vehicle, because it's referred to under the Motorized Snow Vehicles Act, is not necessarily the same, in certain instances, as a motorcycle, moped, car, truck and so on, but probably for the first reason. I'm up for reviewing it, but this wording was developed by private sector solicitors working with provincial solicitors and provincial staff.

**Mr Levac:** Thank you, Mr List. I appreciate your presentation. I listened very carefully. What you're looking for is an amendment that basically includes this particular, single issue that will influence a very large portion of the trails, if I'm hearing correctly.

**Mr List:** That's correct.

**Mr Levac:** I also spoke to some ministry staff, and they basically said that this could be just a small piece and we might have to come back to this. Are you suggesting that this is an amendment that should be



inside the bill in order for the trails to be proper and legal?

**Mr List:** That's correct. As I mentioned in my opening comments, I look upon this as an opportunity to properly secure a snowmobile or recreational trail system. It's primarily directed toward snowmobiling. But this act, "to promote snowmobile trail sustainability," deals not only with the Motorized Snow Vehicles Act but with a couple of other acts. It has cleanup items as well. So when I saw it I thought, "There may be good reason that people have drafted it this way." But quite frankly I consider it an oversight to not deal with this issue as an opportunity, because it is complementary legislation.

**Mr Levac:** Great. Mr William MacDonald from Huntsville, as Mr Dunlop pointed out, indicated there were some issues that needed to get addressed, and I think the Chair has indicated that we were going to take a look at that as well. I think this is the one we're talking about, is it not, Mr Chair, for clarification?

**The Chair:** Yes, it is.

**Mr Levac:** I think you've done that, so we'll be able to tell Mr MacDonald that you too came forward with those concerns.

You mentioned about the permit and your employment, what you are doing in business. It was also told to us by interpretation that there is a clause in the bill that would allow for exemptions, it being "traditional users." I suggest we have probably discovered another traditional use as interpretation. We're talking about trappers and other people who would use the trails to get from point A to point B. Your job, if I'm not mistaken, including your business, would be to get from point A all the way around everywhere to get to point B, so you would be actually travelling the trails to do your job, correct?

**Mr List:** Correct.

**Mr Levac:** If that's the case, I'm assuming we could put that exemption in there, because I think the legislation's spirit is not to stop you from doing your livelihood.

**Mr List:** I hear what you're saying, but again, I'd respectfully disagree. My comment was that—

**Mr Levac:** You said it was part of business.

**Mr List:** It is part of business, but beyond that I am a very strong supporter of recreational trail development, including snowmobile trail development.

**Mr Bisson:** You'll pay your fair share.

**Mr List:** I'll pay it. I don't have a problem with it. I think it's the best deal going. I can play a game of golf at Deerhurst and it will cost me 130 bucks, and that's what I pay for a permit to go snowmobiling all year in Ontario. I can't understand why people find that offensive.

**Mr Levac:** OK. So what you're saying is that for the case I presented, you would not look for an exemption.

**Mr List:** Don't want an exemption.

**Mr Levac:** Not on a personal level but simply describing the job.

**Mr List:** I get an exemption through business for the one snowmobile I use for business. To me, that's a cost of doing business.

**Mr Levac:** That's a good clarification. Thank you for that.

**The Chair:** Thank you, Mr List. I appreciate your bringing a new issue before us.

I would just draw to your attention that under parliamentary practice you normally cannot amend a bill that was not originally in the statute before us. However, anything can be done by unanimous consent of the three parties. Obviously we'll all have to go back and reflect on this suggestion, but it certainly does bear on the issues brought earlier by the town of Huntsville. Thank you very much for bringing your personal—

**Mr Bisson:** We could ask for unanimous consent right now.

**The Chair:** I think that, were it not for the issue of perhaps changing the wording to make it more inclusive, I don't know whether—

**Mr Bisson:** I won't go there right now.

**The Chair:** No, I don't know whether Mr Spina was alluding to things like ATVs—municipalities would use some other examples that might not. I don't think I've heard of a linear skateboard park out in the country, but ATVs are certainly an issue and that might be something.

**Mr List:** Mr Chairman, if I may, I don't know about the other sections of this bill, but I do know there was discussion when the Liberal Party was in power in this province, where the representatives in this area, as well as in other parts of the province, agreed that this section needed to be altered. There was agreement as well from the NDP that this section of the Municipal Act needed to be amended, and I believe that there is support from this government, or at least recognition, that that section needs to be amended. I would hope that what I just said can be documented, and perhaps the parties, unless there's a new party—that there is recognition about that.

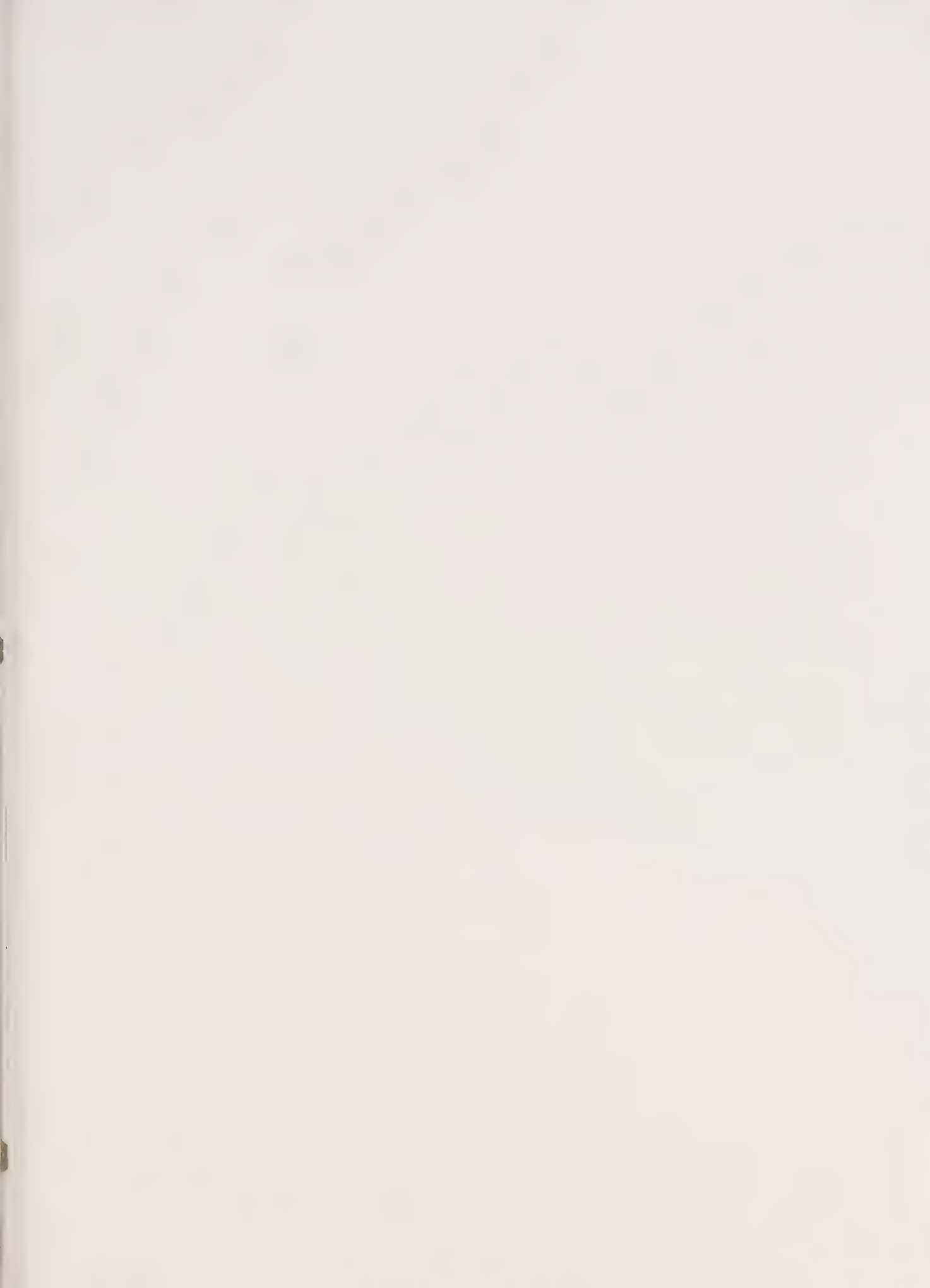
**The Chair:** An excellent suggestion, but that's not to suggest we shouldn't look at incorporating it into this one. You certainly won't get any argument from this Chair that we need a new Municipal Act.

Thank you very much for your comments and for taking the time to come out and make them to us here today.

That being our last presentation, the committee will stand recessed until 1 o'clock in Peterborough this Friday.

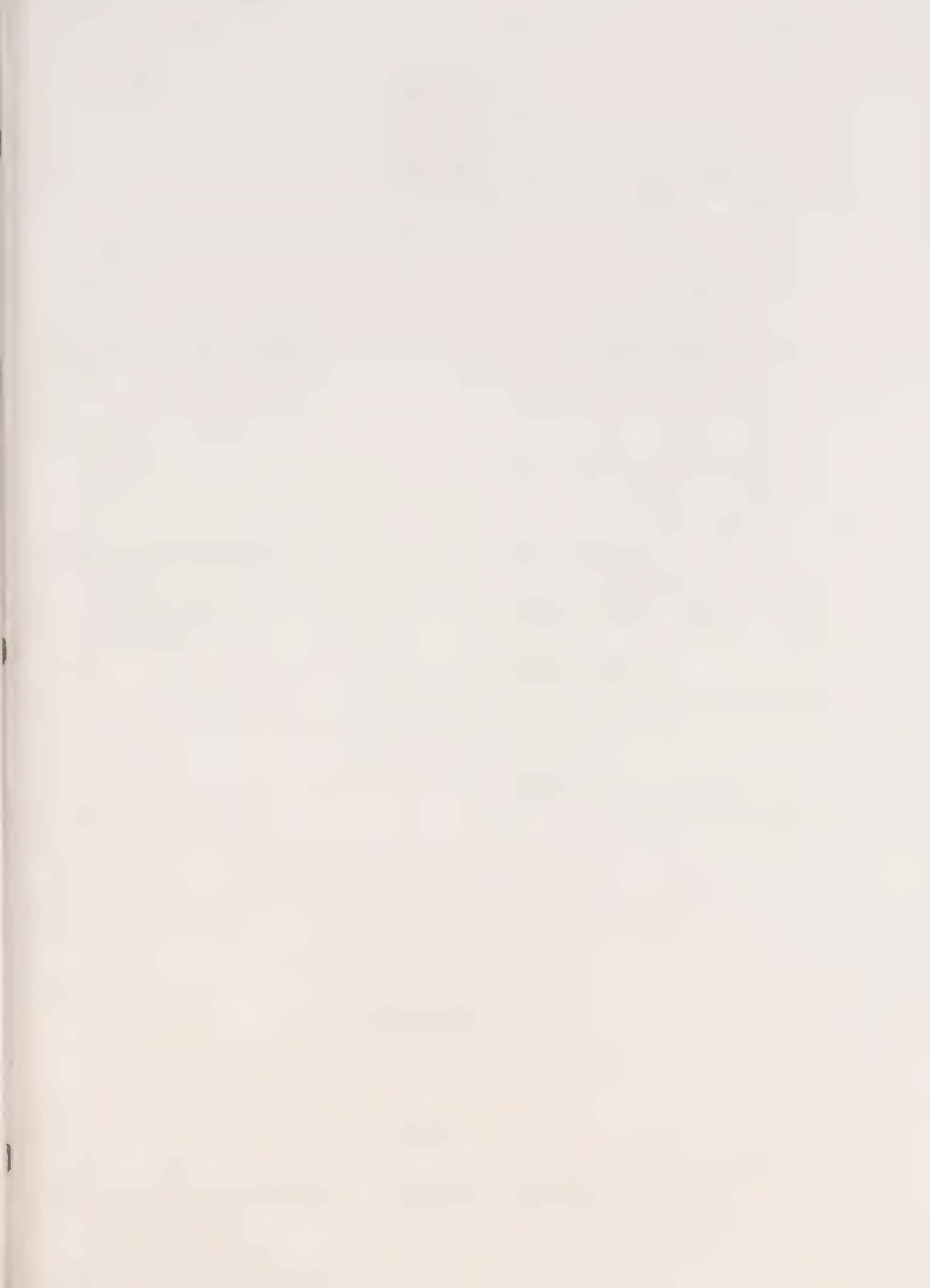
*The committee adjourned at 1627.*











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First Session, 37<sup>th</sup> Parliament

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**Official Report  
of Debates  
(Hansard)**

Friday 8 September 2000

**Journal  
des débats  
(Hansard)**

Vendredi 8 septembre 2000

**Standing committee on  
general government**

Motorized Snow Vehicles  
Amendment Act, 2000

**Comité permanent des  
affaires gouvernementales**

Loi de 2000 modifiant  
la Loi sur les motoneiges



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Friday 8 September 2000

Vendredi 8 septembre 2000

*The committee met at 1300 in the Holiday Inn, Peterborough.*

MOTORIZED SNOW VEHICLES  
AMENDMENT ACT, 2000LOI DE 2000 MODIFIANT LA LOI  
SUR LES MOTONEIGES

Consideration of Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement / Projet de loi 101, Loi visant à favoriser la durabilité des pistes de motoneige et à accroître la sécurité et les mesures d'exécution.

**The Acting Chair (Mr R. Gary Stewart):** Good afternoon, ladies and gentlemen. I think we'll commence; it's now 1 o'clock. My name is Gary Stewart and I have been seconded into being Chair of this hearing today. To my colleagues, welcome to the great riding of Peterborough.

We've got a number of groups, needless to say, that are going to make presentations. The individual presenters will have 10 minutes and the groups will have 20. When you come forward and sit in front of us, if you would mention who you represent and the names of those who are with you, we would appreciate it. As mentioned, you have 20 minutes, and that can be done either by presentation or answering questions. It is your 20 minutes, or 10, whatever the case may be, and you can do it the way you want to. If it be questions and if there is time at the end of your presentations for questions, it would rotate, starting with the official opposition.

## PORT PERRY SNOWMOBILE CLUB

**The Acting Chair:** It being 1 o'clock, we ask that the Port Perry Snowmobile Club come forth for their presentation. Could you please identify yourself and your members as well, Mr Harper.

**Mr Charlie Harper:** Good afternoon. I want to introduce Bill Harper and Larry Davidson, who are accompanying me today.

My name is Charlie Harper. I'm president of the Port Perry Snowmobile Club. I've snowmobiled for over 30 years and been a member of our club since the first day it was formed, and that was 30 years ago. I'm here to represent our club, our area, and snowmobiling in general.

I'd like to thank the committee for giving me the time to state my views.

Over the years I've worked at all aspects of the club, from cutting brush to putting up signs, building bridges, signing landowners, operating groomers, various jobs of the executive. I've been the president for the last 10 years. I'm also a driver trainer and a warden. All this, of course, is volunteer. This is not an exception, by any stretch of the imagination; this is sort of normal for snowmobiling. My brother, Bill, has been with the club for 30 years; 29 of those 30 years he's held an executive position. Larry is our vice-president. He's been with the club for 30 years and has held various positions within our club.

When we started snowmobiling back in the late 1960s and early 1970s, we realized immediately the need for organization, so we formed a club. Then we started to build some trails. Our goal was then much the same as it is today: to build safe recreational trails for our members. We did this with a user-pay concept. In those days, we sold club memberships. Those funds were used to pay the expenses of building the trails etc.

Then we saw other clubs forming around us, and we knew that we had to link these clubs together to provide greater snowmobiling trails. So in 1974 we formed a snowmobile association. We called it the Central Ontario Regional Snowmobile Association, or CORSA for short. We joined our clubs together to give riders a better riding experience. We have five clubs in our association now. We look after just about 2,500 kilometres of trail, and we have about 6,500 members.

In 1974, along with forming our association, we joined the OFSC. We could see the OFSC as a necessary part of the link. They're a not-for-profit organization, and they were there to support clubs and to help form a province-wide network of trails. The OFSC works very well because it's governed by the members, the clubs, through our district governors, who feed information from us to them. They can set policies and directions province-wide.

We've always had a user-pay system. When the OFSC introduced the trail permit, we gladly accepted that. We saw that if we were going to require and ask the snowmobiling population to buy permits, we should make them easily obtainable. We set up outlets wherever we thought snowmobilers would attend. That process has worked very well in selling the permits.

The clubs' jobs have basically remained the same over the years. It's our responsibility to obtain the landowner permissions, keep the trails brushed and clean, put up the signs, do the grooming, sell the permits and that sort of thing.

But now we have a little different situation. Where the trails are now advertised as a winter tourism vehicle, we find that our usage has increased dramatically. I guess that says it's working, but that brings about a financial problem. The permits cover about 50% of our cost; the remaining 50% is made up through volunteers like ourselves. The Sno-TRAC money put a lot of new equipment—much-needed equipment, I might add—on the trails, but it didn't provide any operational capital to offset the increased traffic. In fact, it took operational money away from some clubs because they had to meet the grants on a 50-50 basis.

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The tourism has generated a lot of traffic. But we always have felt that everybody should pay their fair share. If you use the system, then you pay; if you don't use it, you don't pay. We also think that everybody must pay to use the system, including the government, which spends millions advertising the trail system. Technically, that makes you a trail user.

The OFSC mandatory permit: we realize right upfront that there have to be exceptions. There are users out there—hunters, fishermen, people getting to their cottage, trappers, etc—who must be exceptions, but they are minor details that can be worked out quite easily.

The one thing the mandatory permit would do is ensure that all recreational snowmobilers pay their fair share. It would also show government support and recognition.

I have a little article here that was in our local paper written by an outdoors writer, Steve Bond. He was concerned, and rightly so, about the mandatory permits. In his article he says, "Already, I'm required by law to license and insure my Elan and if I'm forced to buy a trail permit to ride on half a mile of OFSC trails, the yearly bureaucratic expenses will easily exceed the value of the sled." The interesting part I took from that is that he's questioning his cost, but he's not questioning the licence fee and he's not questioning the insurance. Why? Because, he says, "I'm required by law," and that's the key. If the mandatory permit is required by law, then it means a lot more, in my opinion.

We have to make sure that this mandatory permit would be easily enforceable. This job can be handled by the OFSC's 2,500 wardens who are already trained and in place now and the many STOP officers who are already trained to handle the job. What is unique about this situation is that each club has its wardens and they know the area, they know the people, they know who the trappers are, they know who the exceptions should be. It wouldn't be a big deal at all. This could be handled quite easily.

We speak of the mandatory permit. This must be an OFSC mandatory permit, not an MTO mandatory permit.

The OFSC must retain all aspects of the trail permit, including the design, production, issuance, sales outlets, pricing, and use of the permit revenues. They've done an excellent job in the past and they'll continue to do an excellent job. Every dollar that is taken in is well accounted for. They have the expertise to do this.

The OFSC needs to be part of any meetings on Bill 101 to help set regulations or any amendments that may come forth. They need to be a part of that as well.

The problem with losing this control from the OFSC, as I see it, if they were to become sort of government trails, is that that would be the start of the end. The volunteer base will drop off. Things will not be done because you wouldn't have that club dedication, and also that dealing with landowners and getting these permissions.

Various parts of the province have different situations. In our particular area—and I can only speak for our area because that's what I'm familiar with—about 70% of our trails are on private land. That means the club members have to go to the landowner and obtain permission from the landowner to put a trail across his property. We have to sign it and mark it, and in a lot of cases there are only maybe two or three people in a particular club that could get that particular landowner agreement.

In one instance we ran into last year, my brother and I went to a landowner who we know quite well, and he knows us. He owns a large tract of land. To get around him would mean many miles of road-running. But we went to him about putting the trail through, and he wasn't happy. He said: "I gave you a 30-foot corridor last year and the snowmobiles ran out 50 feet. You ran over my fall wheat. You've been coming through here for 20 years. What the hell do I get out of this?"

He said: "You started out with your trails and I'd get some traffic on a Saturday and Sunday. Now it's seven days a week that snowmobiles are going through here, sometimes at 3 o'clock in the morning."

Well, that's a situation where we talked to him. He said: "Come back next week. I'll talk to my son." We went back the next week and they agreed to allow us through their property.

"Now," he said, "you've got to go here instead of here," because some of these trails do move from year to year, depending on crops. He said, "I have a wheat field over there and you're going to get nowhere near that." So he gave us a corridor across his property, which we staked heavily. We used two-by-four stakes, sharpened. We painted them red, put a reflective strip on the top and we put them across his property like a picket fence. We had to guarantee the man that people would stay on the trails. This is the sort of situation with landowners, and we have a lot of them to deal with.

Like I say, the OFSC and the clubs must retain control or these jobs just can't be done. In summary, I'd just like to say that the mandatory permits are necessary, with the exceptions that have to be worked out to accommodate people like the writer of this article. They should be enforced by the trail wardens and STOP officers, and they



should be easily enforceable. The OFSC must retain all control of all aspects of snowmobiling, including the permits. Government will show support of snowmobiling by legislating the mandatory permit.

I guess our bottom line as a club is, if this is impossible to do, then I would say our club would back away from the request of mandatory permits.

That's all I have to present today. If there are any questions, I'll attempt to answer them.

**The Acting Chair:** Thank you, Mr Harper. We will, as I said, start a rotation of questions. Either Mr Levac or Mr Gerretsen.

**Mr Dave Levac (Brant):** Mr Harper, the way the legislation is written, you've implied that it does not give the authority to the OFSC, that it's government. Is that what you're suggesting by the bill?

**Mr Charlie Harper:** Yes, and that's what I took from the bill, whether I'm right or wrong.

**Mr Levac:** Right. Are you aware that the legislation cannot—I'm assuming this and I'm going to make this assumption—cannot just simply say you have to have mandatory permits and OFSC just takes over the whole game; that there's accountability in the legislation that has to account for the permits collected? My understanding is that's why the legislation is written the way it is. If I'm hearing you correctly, if that can't be modified, then your club would probably not be in favour of mandatory permits. Is that correct?

**Mr Charlie Harper:** That's right.

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**Mr Levac:** Then my final question is, do you believe that the clubs will fold because of the predicament that's been described throughout the hearings, "We need to have mandatory permits in order to raise the funds to do the things we're doing for the trails today because of the increased use, because of the growth industry that's taking place as a result of snowmobiling"?

**Mr Charlie Harper:** I don't know whether all the clubs across Ontario are going to fold; I can just speak for our own area. I can see, looking over my shoulder, the volunteers coming behind me. The only problem is, I don't see anybody.

**Mr Levac:** I would concur with that. Maybe a supplementary to that, then. So if it's possible, the legislation should be amended or modified before the final reading and passage to allow for the OFSC to have control over the permit money to do what it's been doing for 30 years?

**Mr Charlie Harper:** That's right.

**Mr Levac:** That's what I'm hearing. We have a dilemma, that I understand, that legislatively that can't be done because of regulations that exist within the Legislature that there has to be accountability, that if you collect a permit, that's the public's money. Even though it's a permit for you using the snowmobile, once the government collects that, it's the public's money and there has to be accounting on the government's side for that expenditure. Therefore, releasing complete control of that releases the accountability of the government.

**Mr Charlie Harper:** I guess what—

**Mr Levac:** I'm not defending the government and I'm not defending the legislation; I just think that's my understanding. I'll defer to Joe or to the legislative people if that's improper, but I want you to continue having that comment in mind.

**Mr Charlie Harper:** I guess the way I look at it is that for a number of years the OFSC has controlled and designed through the input from the clubs. We've had a permit and we've sold a permit. We've turned that money back into the trails, and that has worked.

**Mr Levac:** Yes.

**Mr Charlie Harper:** That's what we want—

**Mr Levac:** That's what you're looking for.

**Mr Charlie Harper:** That's what we're looking for.

**Mr Levac:** OK.

**Mr Bill Harper:** Can I just ask a question?

**The Acting Chair:** Yes, if you want to make a comment, sir.

**Mr Bill Harper:** Can you just clarify? When you said it can't be done, are you talking about government controlling the whole thing, or an overseer—

**Mr Levac:** No, no, no.

**The Acting Chair:** Sir, would you tell us who you are first?

**Mr Bill Harper:** Bill Harper.

**The Acting Chair:** Thanks, Bill. Go ahead.

**Mr Levac:** I guess to explain, my understanding is that because you're collecting a fee on behalf of the government when you create a permit, it becomes public money. When it does that, government has to be accountable for it. Therefore the government would have a hard time explaining how they've taken the public purse and given it all to that group, without having some kind of accountability on this end. Does that help clarify what I'm trying to say?

**Mr Larry Davidson:** Larry Davidson. It's the snowmobiler that's originating the money by buying the permit, and the way it works now, that goes back into trails.

**Mr Levac:** Yes.

**Mr Davidson:** I can give you an example. The gas tax was originally designed for roads; now only 5% goes back into roads. If the government takes over the permit money, eventually we'll see 5% going back into the trails. It's the demise of the snowmobile trails in Ontario. If it stays with the federation, and all funds collected, even though it's part of the MTO law, it'll go back to into the trail system where it belongs. I'd like 100% of the gas tax to go into roads too. I don't want to see that happen—and that's the fear. We want all the money back into trails.

**Mr Levac:** This isn't debate, so I don't want to get into that.

**Mr Davidson:** You know what I'm saying.

**The Acting Chair:** We have got to the 20-minute time limit. We appreciate your coming forward and making a presentation. It's been all duly noted, and we thank you very much.



**Mr Charlie Harper:** Thank you very much.

#### KEMPTVILLE SNOWMOBILE KLUB

**The Acting Chair:** We would now call on the Kemptville Snowmobile Klub. Again, you have 20 minutes, whether it's presentation or questions. The questions would then start with the NDP caucus.

**Mr Gilles Bisson (Timmins-James Bay):** Just on a point of order before we get started: if in the next rotation, as Chair, you can make sure, if there's only four minutes left, you divide between the caucuses, because there was something I wanted to ask them but—too late.

**The Acting Chair:** If you wish to do that, then we will do that.

**Mr Bisson:** Yes. Thank you.

**Ms Elizabeth Robinson:** I'm Liz Robinson and I'm the president of the Kemptville Snowmobile Klub. Looking at me, you wouldn't know that I suffer from a very acute disorder. For over 30 years I've had an addiction to snowmobiles and snowmobile trail riding. It affects me in every aspect of my life and all seasons of the year.

This sport has caused me to become a snowmobile volunteer. I have been the club social director for eight years and I was the vice-president for four years. I am presently the president. I have received the volunteer of the year award from the Ontario Federation of Snowmobile Clubs and I've also received an Easter Seals Snowarama volunteer award.

My husband and I have snowmobiled since our teens and our two daughters have travelled many kilometres of trails with us. We have owned 13 snowmobiles, sometimes as many as four at one time. This addiction has affected my whole family and has cost us a lot of money over the years. I did some estimates before coming here today on how much we have spent in the past during our snowmobile lifetime: snowmobiles, approximately \$50,000; fuel for 75,000 kilometres of trail, \$5,000; oil and repairs, \$3,000; trailers, \$2,500; suits, boots, helmets, \$3,000; provincial licenses, \$500; OFSC permits, \$4,000; insurance, \$4,500; hotels and meals, \$7,500.

We are looking at a total expenditure on snowmobiling for our family of \$80,000. If you do the math, the provincial tax paid on this amount would be over \$6,000 and the federal tax would be roughly the same, for \$12,000 total in taxes. I feel that we, as well as all of the other snowmobiling families in Ontario, have made a major contribution to the economy of Ontario through snowmobiling. Besides the economic impact, we have made a large contribution to the social fabric of our community. All four of us in our family have contributed hundreds of hours of volunteer time to our local snowmobile club.

Kemptville is a small community located just south of Ottawa. The club sells about 245 snowmobile trail permits annually and maintains approximately 225 kilometres of trail.

We're a very active snowmobile club. We've participated in the Easter Seals Snowarama every year since

it first began, raising from \$8,000 to as high as \$15,000. As well, we support local community organizations such as the fire department, the hospital, the Girl Guides, the adopt-a-child program, and the list goes on. We promote family snowmobiling where we have held safety rallies for children and family rallies followed by cookouts. We offer a snowmobile driver training course for children 12 and over.

Our club volunteers range from 10 years of age to 80. This club is strictly a volunteer-run club and it takes many dedicated people to keep it going.

We have about 75 landowners to keep happy because, without these landowners, there would be no trail system for us to enjoy our sport, and certainly without these volunteers there would be no organized snowmobiling in Ontario.

I have brought with me today our photo album from the last couple of years. You can see for yourselves some of the work that we've done on the trails, club events, family fun, and many other activities.

We sell 245 trail permits, which comes out to about \$25,000 which remains in the club after taxes and the OFSC charges. Most years we are able to match this with our own fundraising. We estimate about 2,500 volunteer hours—that equals one and a quarter person years—which are contributed annually to the Kemptville Snowmobile Klub. Although our family may be more active than the average snowmobilers, we are by no means the exception. Every snowmobile club has its core of very active people like ourselves who run the day-to-day activities of the club.

So why am I here telling you all this today? First, let me explain my view of the situation: snowmobile clubs do not have enough money to maintain the quality of trail that is expected at this time.

Years ago, we didn't worry about connected, groomed, well-signed, brushed-out trails. Most of our riders were local people, and visitors either had a local guide to show them around or were very adventuresome and found their way around by using a compass or even asking lots of questions. There was no concern about liability insurance or environmental issues. It was every man and machine for himself, at the expense of the landowners and at the expense of the safety of the snowmobile population.

If our sport was to survive, we had to organize and develop trails which would be safer and more compatible with the landowners in our communities. We developed the user-pay system, which was adequate at the time it was put in place. Then the popularity of snowmobiling exploded. For example, in our club we went from 99 permits sold in 1986 to 245 today. With higher traffic caused by touring riders from out of the area, we needed better groomed trails, and in order to do this, we needed bigger equipment. It was a real snowball effect, with user fees not keeping up to demand and no financial help from tourism.



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With our early-bird discount permit costing \$120 today and our regular permit price at \$150, the price seems to have peaked for what the market will bear. We have had a couple of bad winters, and club members are grumbling about the prices now. If we raise the permit prices, we are going to have a lot of snowmobilers on our trails with no permits. So how do we increase our revenue?

The OFSC has researched this problem and has come back to the clubs with the suggestion that if every snowmobiler who used our trails bought a permit, it would go some of the way toward relieving our cash shortage. Our wardens patrol the trails, but it is very difficult for us to enforce the OFSC permits using the Trespass to Property Act.

I think we have done an excellent job of getting most of the riders to get a permit through education and friendly persuasion, so now it is time to get tough with the freeloaders. In order for us to address the problem of people who drive our trails with no permits, we need to have mandatory OFSC permits that must be easily enforced. We recognize the need to make exceptions for traditional users. Our OFSC wardens need to have the authority to enforce the permit. Each club across the province has trained wardens who are ready and willing to patrol the trails to make sure the mandatory permits are respected. Finally, we need the control of the permits and revenue to stay in the hands of the OFSC. The member clubs have built this great trail system to the point we are at, and it is the snowmobilers who have the expertise, dedication and willingness to take it to the next level.

In closing, I want to tell you that the Kemptville Snowmobile Klub is a well respected and vital organization in the community and has enjoyed almost 30 years of providing recreational trails. We look forward to many more years of continued success.

At this time, I would like to thank the hearing committee for allowing me this opportunity to speak on behalf of the Kemptville Snowmobile Klub. Are there any questions?

**The Acting Chair:** We have about three minutes per caucus, starting with Mr Bisson.

**Mr Bisson:** Thank you for your presentation. You were saying something that we're hearing fairly loud and clear from most people, which is that we've gone from what used to be a local activity, utilized and enjoyed by local people, to where now our local clubs are really supporting a provincial sport and the burden is falling on clubs. If you're a smaller club it's really more difficult. So I hear your call. What you're basically saying is that it's not just a question of what you term the "freeloader," the person who doesn't buy the trail permit, but also of the provincial government playing a more important role than we have in the past. This is not meant to be critical. We need to find a way to get dollars to the clubs. If we really have a policy of trying to promote a provincial

system, then we need to figure out what mechanism the province has to be involved.

That brings me to the question I have to ask you. I'm not convinced, even after looking at the OFSC document we've got, that just by moving to mandatory permits we're going to raise the money necessary to support the sport and to support the clubs. If you look at the numbers here, they're saying that there are roughly 150,000 machines insured in the province of Ontario—if those are provincial numbers—with roughly 115,000 or 120,000 people who bought permits last year. I'm one of those people who have two machines insured but only use one. I'm not so sure we're going to pick up a whole bunch more permits. So my question to you is, if this committee were to figure that maybe this is not the way to do it and we came back with some other mechanism that says that rather than having mandatory permits we're going to some funding model, as long as the clubs get the money, is that a problem? Or in your view do you still have to have a mandatory permit even if you don't raise the amount of money you need?

**Ms Elizabeth Robinson:** First off, I don't think I'm in a position to answer that.

**Mr Bisson:** Probably more than you realize, because you're the ones who in the end are going to run the clubs. Maybe as politicians we say long things and we don't get to the point. My point is simply this: if this doesn't get you bucks in your pocket in the club, if that's what we figure out by way of these hearings and the work that we do, then are you opposed to the idea of our recommending that we actually create a funding program—because the province gets revenue out of this—rather than having a permitting system, where the clubs are properly funded, on a volunteer basis? In other words, it's not the province that runs it; we give you the money and you guys do what you've got to do.

**Ms Elizabeth Robinson:** I guess you could say we get our marching orders from OFSC, and that's what it's all about for us.

**Mr Bisson:** Just one thing: we heard from the previous clubs that whatever we do, we have to make it enforceable and it's got to be simple. Wardens are not going to be able to enforce this reality; it's going to have to be the police. I'm not sure if we're making it simple—do you follow what I'm getting at?—in trying to enforce who has a sticker on their machine. In the end it won't be the wardens who will ticket or charge or do whatever; it's going to be the provincial police or the city police. Is that a problem?

**Ms Elizabeth Robinson:** It could be, yes. I think so.

**Mr John O'Toole (Durham):** Thank you very much for your presentation. I think you make a couple of very good points. The way you described it, you said it's a snowball effect with users not keeping up with the demand of the financial burden. It really becomes a case, as in all publicly funded or administered things, of demand exceeding revenue. The only way you get revenue is to raise taxes. That's the whole dilemma. There's



always excessive demand. It wouldn't matter what ministry you looked at—transportation, you name it.

I think you raised a very good point, and I think Mr Bisson was trying to make the point: if the mandatory permit came in and the exemptions which were in regulation were allowed to be administered by the federation, do you feel there would be sufficient revenue, while at the same time maintaining the very important volunteer base? I believe the volunteer base is why it has remained the success it has, so less government is better government.

What is most important? I believe Mr Harper said it is very important that it has the weight of law. So, in a general sense, if you have a law that says "enforcement" and you have some stability of revenue—and you'll have arguments about why it's \$120 in Timmins and whatever. However, I also take some exception to the enforcement provision. Realistically, it is impossible, without a new helicopter, for the police to enforce what they already have.

**Mr Bisson:** I thought my question was convoluted.

**Mr O'Toole:** I'm only making a summary kind of judgment, just to get to your point.

**The Acting Chair:** Will you get to the question, Mr O'Toole?

**Mr O'Toole:** It's not really a question, more of a comment.

**The Acting Chair:** You've got about a minute and a half.

**Mr O'Toole:** Do you feel that the revenue-volunteerism balance and some strengthening of the enforcement would allow you to continue pretty much un-governed?

**Ms Elizabeth Robinson:** The volunteers are definitely burned out. That's very evident. As somebody said earlier, look at the number of volunteers who are sitting in the room. If we even got a few dollars, it would definitely help us keep things going and help us in a lot of ways.

**Mr Levac:** You mentioned something in your presentation that I wanted to get specific about, the permissions that were obtained from private property owners. The question I have is—and this is not meant to slight the OFSC or the other snowmobilers who don't get the permits; it's basically inquisitive—can an agreement between the farmer or the private property owner and OFSC and the clubs be exclusive? Do you get written agreements that say only OFSC members or only club members use the trails, therefore excluding the non-permit-obtainer from using the trail?

**Ms Elizabeth Robinson:** In our particular area we have a lot of horseback riders and different organizations as well. In Kemptonville we have to get written permission from each and every landowner. As was said earlier in the presentation, it's very important that only one or two people know the landowners, and they want to deal with those one or two people only, because with new people coming in there's that reaction. I'm a landowner myself, actually. If the horse riders, as an example, want to use

my property, our permission slip from the OFSC does not allow them to travel on my property. If the horse association comes to me directly and wants me to sign a piece of paper, then I would have to consider that, of course, and that would be through their organization.

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**Mr Levac:** So by agreement it is exclusive.

**Ms Elizabeth Robinson:** Yes.

**Mr Levac:** That means that the strength of the law that Mr O'Toole is referring to lies within the agreement between the private property owner, the club, the STOP program and the wardens.

You mentioned the volunteer base. Do you have fears that the volunteer base would dwindle even more if you start to obtain more money from the permits, reflecting on how, now that you've got the money, you can start buying and paying for all of these things? I know it's already happening.

**Ms Elizabeth Robinson:** It is definitely happening right now.

**Mr Levac:** Do you have a fear that the volunteer base will start to diminish even more?

**Ms Elizabeth Robinson:** I think so, yes. I really believe that. You have to hire your groomer operators, the people who go out now to brush the trails, because everybody has the attitude, "I've paid my dollar for or my permit. Why should I take my time and go out and brush trails?" So I think that's very important.

**The Acting Chair:** We've come to the end of the time, Mr Levac. Thank you, Ms Robinson, for your presentation.

**Ms Elizabeth Robinson:** Thank you. If anybody cares to look at the photo album, I'll be in the back.

#### ONTARIO FEDERATION OF SNOWMOBILE CLUBS, DISTRICT 1

**The Acting Chair:** We'll call on the Ontario Federation of Snowmobile Clubs, district 1, please.

**Mr Bruce Robinson:** Good afternoon. I'm Bruce Robinson, governor for district 1. You've probably made an observation on a lot of us 30-year-tenure snowmobilers. We all kind of get the same physique. Basically, it's a ballast to give us good traction on our snowmobiles, and we have handles here for the passengers behind. So it's quite evident—

**Mr Joseph Spina (Brampton Centre):** Now you know why I look like this.

**Mr Bruce Robinson:** I'm a long-time snowmobiler, as you can see.

I'm here today representing district 1 of the OFSC. I'm elected to represent 32 clubs in eastern Ontario. If you draw a line from Renfrew, north of Ottawa, down to Napanee, everything east of that line is district 1. We are a long-established snowmobiling area, and most of the clubs have existed since the early 1970s. We are about 10% of the permits sold in the province and about 15% of the trail system. Snowmobiling is a very important



component of winter recreation and a vital part of the social fabric of our rural communities.

As I prepared for today, a question came to mind: what has brought us to this point that we're here today? After 30 years of volunteers providing our snowmobile trails with a very successful user-pay system, what has transpired that forces us to turn to the government of Ontario for help? I want to tell you something right up front about the people you are talking with here today and who are running the snowmobile clubs across the province: they are hard-working, they are dedicated, they are stubborn and they are fiercely independent. So I can assure you that if we are coming here today to ask for help, we really need it.

The issue we are dealing with is lack of funds to sustain our trail system into the future. We could look at various methods to raise money. We could put the permit fee up to \$200. Selling 115,000 permits at \$200 would probably take care of our shortfall, but the market won't handle a price increase like that, and then we'd be faced with a bunch of non-permit sleds running all over our trails. Again, the Trespass to Property Act is difficult for us to enforce because we have to drag the landowner into court; there is a lot of baggage with the Trespass to Property Act.

Our trail wardens have done a wonderful job of making sure the snowmobilers buy a permit in our area. I want to stress that in eastern Ontario, I estimate that we have 95% compliance with the trail permit. I have reason to believe, though, that there are other parts of the province that are not nearly as fortunate as we are. So we are supporting the mandatory permit in eastern Ontario not so much for our own benefit, but as a benefit to the whole province.

We stress, however, that we would like the OFSC to retain control of the permits. We would like to see the printing, distribution, pricing and allocation of funds fall under OFSC jurisdiction. Basically, for the reasons you've heard previously here, we'd like to control our own destiny, control the funds and make sure every dollar goes back into the trail. If we don't control our own organization, I'm afraid we will see volunteers quitting and landowners revoking their permission. There exists a real pioneer kind of community spirit among snowmobile volunteers and landowners. It's a real hard thing to describe, but it is a very delicate partnership.

I'm from a fifth-generation farm from eastern Ontario and I know how farmers operate. Any change to our agreement usually causes suspicion and concern among landowners and they'll cut you off like that. With government intervention, I think we'd be running a hard sell to have them give us free access to their land. We're going to have a big job selling them mandatory permits. With the landowners being one of our main partners, we need to pay special attention and assure them that we recognize traditional users. Farmers aren't only in partnership with us; they like hunters too. The hunters keep the varmints off their property and stuff. So we've got to recognize that traditional users would be exempt. The

point of the mandatory permit is to get the freeloaders to pay their fair share. The volunteers who put so much time and effort into the building and maintenance of the trail system are tired of those who refuse to pay. The mandatory permit would go some of the way to helping meet the cost—not all of the way but some of the way.

We don't expect mandatory permits to suddenly cure all of our problems. We recognize other challenges that we'll need to struggle with. Volunteer burnout has been mentioned today. New people are not stepping up to replace older volunteers. Like other volunteer organizations across Ontario, we are experiencing a shortage of manpower to run our clubs. We are in competition with so many other organizations for volunteers, and families today spend their a lot of their spare time on home-based entertainment, such as satellite TVs and the Internet, and it's hard to budge them out of the house.

That snowmobiling has been a rural sport is another thing I want to bring to mind. People from farms and villages formed the first clubs, and it was co-operation with the landowners that helped us to develop the trails. But as the sport got popular, the problems increased. Our urban neighbours began to catch on that we were having a lot of fun out there and they've decided to join in. They've swollen our ranks of snowmobilers, but the work still falls onto those few dedicated locals who live in the area where the trails are. The work grew and the numbers of volunteers didn't, so the snowmobile clubs are forced to hire out more of their work, which used to be done for free.

Another problem we have is rerouting trails on private land each year. That was mentioned. As the older farmers sell off, new landowners are often not familiar with the snowmobiling scene and they have a lot of concerns about liability and damage to their property. Although we have insurance and a good reputation as responsible tenants, we're often unable to convince new landowners to allow us to cross their property. Many of these people have never seen the benefits of a snowmobile club in their community and are reluctant to allow us to continue using the trail. We have no way of giving these people an incentive to allow us to use the land because we don't have the funding available, and we understand that once you pay one landowner, you have to pay them all.

The last problem I'd like to touch on is our involvement at the club level to do with tourism. Our clubs are often confused about marketing our permits. Generally, we do a very good job of selling permits to the local population, but many of our clubs are not prepared to market for tourism or don't have the funds to do that. Some clubs which are situated in very popular tourist areas have business people in their area who benefit from snowmobiling and they go and do the marketing for them. They go to the large shows around the country and do promotions. Many other clubs totally ignore tourism because they can't handle any more increase in traffic anyway and they don't believe it's their job to promote tourism. They see their mandate as providing good trails for their local permit holders. As a result, we have a



mixed bag of promotion, with some areas very well marketed and others with none.

Enough of the problems. What can we do?

1350

(1) As I mentioned, we are in favour of mandatory permits administered by the OFSC. The expected revenue increase will help with operational costs and make snowmobiling more sustainable.

(2) There are some other ideas that I'd like you to entertain. Maybe a portion of the provincial registration fee, which is now set at \$15, could be kicked back to the OFSC to be put on trails. Northern Ontario doesn't pay a fee at all at this time, and maybe they could contribute and we could stand to gain for the whole province. They stand to gain as much as the rest of us. If we got \$10 back on that registration fee times 150,000 permits, if we were able to sell that many, that's a big chunk of money.

(3) A landowner incentive program would be especially welcomed in southern and eastern Ontario, where the majority of the trail is on private land. A plan could be explored where a landowner could get some sort of tax break for letting a recreational trail be established on his land.

(4) What about a provincial sales tax rebate on grooming equipment and trail signs? We have new groomers that cost \$150,000. Every time we purchase one of those, it's \$12,000 PST. We get the GST back, so what about a kickback on PST also?

(5) Possibly the office of Tourism Ontario could help us out with marketing, especially if we got our funding down so that we were able to provide a consistent and sustainable product.

(6) Finally, I think the province should continue to provide grants for infrastructure, and we should find a way to make all clubs in the province eligible. We're very thankful for the funding that came through in SST1 and SST2 and previously in the Sno-TRAC program. I especially want to say thanks from eastern Ontario for the COBRA program, which helped us restore our trails to pre-ice-storm condition. Some kind of ongoing program that supplies 50% funding on infrastructure and capital purchases would be most welcome.

Just like when my wife hands me a list, I've got to say that's quite a shopping list, but don't forget about the economic and recreational benefits that this sport contributes: \$1 billion of economic impact in Ontario per year; millions of hours of recreational enjoyment in winter for all age groups. Snowmobiling can be as relaxing or as invigorating as you want to make it. It is truly a family sport enjoyed by young and old.

We are proud of what we have accomplished in 30 years. We have taken this sport to where it is today through volunteers and a user-pay system. The future will also be based on volunteers and a user-pay system, but now we want all the users to pay and we want the province to reinvest some of those economic gains back into the sport to keep us on track for the future.

Thank you very much, Mr Chair and committee, for listening to me today.

**The Acting Chair:** Thank you very much, Mr Robinson. We have about two and a half minutes per caucus, starting with the government.

**Mr Spina:** Thanks, Bruce. I have two questions. The first one is, do you concur with your wife's comment that your whole family is nuts about snowmobiling?

**Mr Bruce Robinson:** Absolutely.

**Mr Spina:** I just wanted to make sure we got a communication that was the same from both husband and wife here.

**Mr Bisson:** I think she just said he's nuts. That's what my wife says.

**Mr Spina:** We won't go there, Gilles.

Bruce, you talked about tourism, and I was very interested in that for obvious reasons. Do you have any idea how many visitors from out of province use your district trails? I know you'll have visitors from other clubs outside of your district, but any guesstimate as to how many would come from the Quebec area or maybe even south?

**Mr Bruce Robinson:** We have not too many from the Quebec area except along the borders. They have their own product over there and it's as good as our own.

What we do find is that we're increasing every year in riders especially from New York and Pennsylvania. We are not getting them as much as we would like from along the border. We live fairly close to the St Lawrence River. There are two bridges that come across from New York state into our area, and we're not picking them up. What we are finding, as I was saying, is that the areas that were promoting there, going to the Syracuse show, going to out-of-province shows, are the ones that are picking up the out-of-province riders.

**Mr Spina:** Who is going to these shows?

**Mr Bruce Robinson:** We have areas like Calabogie. They're heavily into promotion. West Carleton has done some; that's west of Ottawa. It's places that have a lot of tourism in the summer that are able to reach these tourists because they're there fishing in the summer, they may come back for hunting in the fall, and then you get them to return for snowmobiling in the wintertime.

Our numbers are increasing. We're not as good as some of the more popular areas in Ontario, but I would say a Calabogie club, which is in a prime tourist area, is getting about 10% of their ridership, right now, out of province.

**Mr John Gerretsen (Kingston and the Islands):** Thank you and congratulations on an excellent presentation. What happens, then, to these out-of-town snowmobilers who use the trails? What percentage of them are you actually able to sell permits to?

**Mr Bruce Robinson:** These guys are just hearing about snowmobiling in Ontario. It's just starting. I'll give you an example. Two guys from Pennsylvania got in their truck last winter and decided to drive north till they found trails. They came across the bridge at Johnstown, which is near Prescott. They came up Highway 16 towards Ottawa. The first sign they saw was a tunnel that went under Highway 16 with signs on it. They pulled off



at the local store, were able to pick up permits, which happened to be from our club, they asked who to phone, they phoned me and I went over. They were totally astounded when I laid out the provincial trail map and showed them where they could go. They're used to snowmobiling in Pennsylvania, where they're getting very unconnected, localized trails. They were just blown away with the fact.

**Mr Gerretsen:** OK, but the question I have is, what percentage of these people would actually stop in to get a permit? What are we talking about? Are we talking about most of them, some of them?

**Mr Bruce Robinson:** Who purposely go to get their permit first? I would say about 50% of them go to get their permit. The others wait until they're found on the trail by a warden to buy their permit.

**Mr Gerretsen:** Do you get any information from the snowmobile dealers and salespeople as to who's buying snowmobiles, so you can contact these people for permits? Does any of that happen?

**Mr Bruce Robinson:** Not at the club level and not at the district level. We don't have that avenue. The only way we're able to track out-of-province snowmobilers is through our visitor permit. We have a seven-day and a one-day permit. We're able to track the address and know where those people are from through that permit.

**Mr Gerretsen:** One question I have in my mind is that you could have some very active clubs that have relatively few trails and they would in effect be getting an awful lot of money. I noted up in northern Ontario they've got a huge number of trails, but obviously not as large a locally based population. The concern I have is the unequal distribution of the permit money. Any ideas as to how that can be handled?

**Mr Bruce Robinson:** We're handling it now. Through the OFSC we have a formula on a points system. Depending on the number of trails and the number of permits per kilometre of trail that you sell, there's a formula where the funding is divvied up and equalized throughout the province. Now, it doesn't work 100% and we actually have something coming up at our convention this year that's going to make it even more fair. We're trying to work that way. But we have addressed that at the OFSC level and that's something we can control internally. But you're absolutely right, there have been discrepancies in the funding depending on where your club is situated.

**The Acting Chair:** Thank you, Mr Gerretsen. We're going to now defer to Mr Bisson.

**Mr Bisson:** Thank you for coming to my rescue, Chair.

Bruce, I want to thank you for your presentation because you've actually brought together what I think are some reasonable proposals about what we can take a look at that would supplement a mandatory trail permit system.

Just a point for the record: we do pay the registration fee on vehicles now in northern Ontario, and have since 1996. I thought I'd put that on the record.

Listen, an interesting point you made, if I understood you correctly, is you're saying 50% of those who come in from outside to utilize the trail system end up only buying the permit once they're caught. I'm wondering, is that because they don't know, or is there just—

**Mr Bruce Robinson:** That's in our area, in eastern Ontario, because we are not set up to handle tourists the way other areas such as, say, the Muskoka area handles it.

**Mr Bisson:** As far as local residents go, I heard you say about 95%.

**Mr Bruce Robinson:** We're running at about 95% compliance.

**Mr Bisson:** Of those who are pulled over by the wardens, saying "By the way, you need a trail permit," are they normally saying, "Oh, OK, no problem, let me pay," or is it—

**Mr Bruce Robinson:** Usually. We get the, "Well, I only use it twice a year," thing, and we try to say, "Well, if you use your car twice a year you still have to buy a licence."

**Mr Bisson:** But they end up buying?

**Mr Bruce Robinson:** Usually. What we normally do in our club, in the area I'm involved with, is we don't go to the trouble of trying to get the landowner in to press a charge of trespass; we give them an option: turn around and get off the trails or pay the money. If they don't want to pay, they leave.

**Mr Bisson:** And normally you don't have a conflict?

**Mr Bruce Robinson:** We've never had a situation.

**Mr Bisson:** It's just one of the worries I have around the mandatory: if you have an overzealous warden who decides to force the issue with the individual, we wouldn't want a confrontation and the person not be properly trained in how to deal with that. I'm just wondering what kind of a problem we would have. Most guys are good, but I just—

**Mr Bruce Robinson:** Our training for our wardens does handle the confrontational situation and what to do. The thing to do is to turn them away, just turn them back.

**Mr Bisson:** OK, thank you very much. It was a very good presentation.

**The Acting Chair:** Thank you, Mr Robinson, for your presentation.

1400

BAIT ASSOCIATION OF ONTARIO

**The Acting Chair:** We'll call now on the Bait Association of Ontario, please.

**Mr Guy Winterton:** I thank the committee for having us here this afternoon.

I had an overhead presentation but, given the awkwardness of the set-up—and I know you've all got a copy—I'll just use it from here, if you don't mind.

Usually the first thing that happens when we talk about the bait association is everybody goes, "What? What's that?" So I want to just take a minute or two and explain who we are.



It's a very new association in Ontario; it's a non-profit corporation in the last year or so. It really was formed mostly at the request and with the help of the Ministry of Natural Resources so that they have a one-window focus to deal with the resource users in this particular industry, and, of course, also to do what has been going on in government for quite some time, that is, try to involve users more in management of the resource and as partners in resource management.

The industry actually is not a huge industry. It has about 1,500 licensees. About half of those folks are harvesters out on the land and about half of those would be dealers. Harvesters may also own a retail store and deal as well.

It is a \$40-million to \$60-million industry in Ontario. To give you a bit of a comparison, it's about equivalent to or perhaps a little larger than the commercial food fishery in Ontario, on the Great Lakes, mostly, and on a few inland lakes. That will give you some sense of scale. Of course, as you know, these folks tend to depend more on the small stream, pond and lake environment, so they tend to be, if you will, all over the land out there.

I mentioned they have a new business relationship with the Ministry of Natural Resources. Traditionally, MNR has not put a lot of time or effort into bait knowledge or bait management. I worked for them for many years, so I know it was a low priority in the organization.

On the other hand, the industry, for the most part, holds most of the knowledge in Ontario with regard to bait. They know about the fish, they do all the inventory, they do all the monitoring, they know all the management strategies and they manage the resources on the ground. With the new business relationship, we're gradually taking over more administration from MNR and we have significant input into policy development and legislation, of course, because good legislation and policy is dependent on the knowledge of the first three or four. MNR is still involved as our partner. They do policy, licensing, regulations and, of course, enforcement.

I guess one of the key issues for our folks is that with the new business relationship came a significant increase in fees. The harvester's fee went from \$17.50 to \$300 last year and it choked a few people. I think it's fair to say that. At the same time, though, as an industry we recognize that resource management costs money. As we've said to the Fish and Wildlife Advisory Board, and we'll say it here, we're an industry that's never going to complain about paying our fair share for doing a good job of management.

In addition to that \$300, for every bait harvesting area a person has, he pays another \$32.50. So some of these folks are paying upwards of \$1,500, \$1,800 in licence fees, which is reasonably substantial in their minds, certainly. They feel, of course, that they are paying for access to the resource and access to the crown land already, which is where most of the resource is. As I mentioned, in terms of winter trails, the bait industry probably uses these trails to some extent in their local communities as they carry out their business. In fact,

they're long-time traditional users. For decades they've been involved in the bait industry and they may actually have built and maintained some of these trails that have gradually become part of the broader network.

Our position is pretty clear and pretty simple. I've listened to some of the presentations here and we had one of our folks in Timmins whom you listened to. Basically, we're supportive of Bill 101 in general terms for recreational snowmobilers. Obviously, there are lots of components of that issue for the snowmobilers that they have concerns about. We don't have issue with that at all. Our biggest concern and our position is that we request an exemption from mandatory trail permits to conduct the business of bait harvesting and to fulfill the resource management responsibilities under the new business relationship with MNR. We feel that we're paying quite a bit more money and we're also doing a lot of what at one time perhaps was considered to be government work and we see it now as the resource user's responsibility.

That's basically where we're at, and we're certainly prepared to work with the government or anybody on appropriate identification of legitimate harvesters. We're certainly not suggesting, either, that a harvester who has a licence in Kenora and who wants to go snowmobiling in Timmins get a free ride. We're talking about using trails occasionally to do the business at hand on the licensed area and perhaps getting access to that licensed area.

That's really all I have to say. That's our position and I think it's fairly clear and simple.

**The Acting Chair:** Thank you, Mr Winterton. That gives about four and a half minutes per caucus, starting with the Liberals.

**Mr Levac:** Thank you, Mr Chair. We won't be using five minutes. It's pretty straightforward.

Are you aware that most of the presentations we've been hearing to this point have been supportive of exemption for traditional users?

**Mr Winterton:** Yes, we are, and we're very pleased with that. We've have a letter back from the Minister of Tourism in a very positive vein in that regard. We just wanted to make sure that our position was put forth clearly to the committee.

**Mr Levac:** I will steal Mr Bisson's joke. He indicated that's a heck of a long way to take a minnow if you go from one part of the province to the other.

**Mr Spina:** You got it in Hansard.

**Mr Levac:** The closest comment was "within reason," and you've covered that off, obviously. If they come prepared with a snowmobile that doesn't quite indicate that it's for business use, that would be evident to the warden of the day.

**Mr Winterton:** Right.

**Mr Levac:** The Ministry of Natural Resources has a different way of dealing with hunters and anglers. Do you support Bill 101 because of its use of the legislation to get the money in and then transfer it back to the OFSC?



**Mr Winterton:** First let me say we support it because we see snowmobiling as another one of those outdoor activities that gets people outside. If they're outside, they're going fishing, and if they're going fishing, they're buying minnows. At the same time, I lived in the north; I lived in Kenora for 20 years. There are some real pluses for the province of Ontario to have a well-organized trail network. I was also retired as a chief of law enforcement for the Ministry of Natural Resources, so I appreciate the difficulties of enforcing and the importance of making a decision and following it up with appropriate enforcement to make it happen. I guess in that regard we're all pretty supportive of that. I think from our focus we're talking about recreational snowmobilers.

The anglers and hunters clearly have some concerns about their traditional use of some of those trails. I guess they've put forth their position fairly clearly too. I think we see ourselves as a commercial user, if you will, probably more similar to the fur harvesters who are going to speak later.

Did that answer your question? I'm not sure it did directly.

**Mr Levac:** Yes. It gave me the general gist of where you're going. Thank you.

**The Acting Chair:** Mr Gerretsen, you've got about a minute and a half.

**Mr Gerretsen:** Just a very quick follow-up question: do you draw a distinction at all between the trails which the snowmobile clubs have gotten permission for from private property owners and other trails? If traditional users start using the trails that snowmobile clubs in effect have negotiated for on private properties, is there a difference there?

**Mr Winterton:** Oh boy, that's a tough one. For the most part, our use of these trails would probably be crown land trails. No doubt there would be some use, and everybody's human. If there is a good trail somewhere and they have an exemption, obviously they probably would prefer to take that. I would think the use would be relatively minimal.

I know that some of our regional associations have had discussions with local snowmobile groups, and generally the snowmobilers' position is, "For legitimate business, use our trails." I assume that takes into account the authorities that they have acquired from private landowners to travel on them. I think it would be difficult to try and separate out the two in any kind of a sensible, enforceable manner.

1410

**Mr Bisson:** Thank you very much for your presentation. I don't think there is any argument from us New Democrats or the other two parties with regard to finding an exemption. In fact, we've already asked our legislative staff to take a look at that to see how we worked that out. But you're right, it's important to hear.

I am curious, though: are you finding in your business of selling bait an increase or a decrease in the demand for bait?

**Mr Winterton:** Demand is generally increasing as people get out and about more. Fishing in Ontario has been reasonably static over the last number of years, although certainly the advisory board has concerns about some decline in participation—that's particularly relevant to hunting, I think. But winter recreation, people have better clothes, and they have perhaps more interest in being out there. The products, the snowmobiles—there's good equipment out there. So it's increasing slightly.

**Mr Bisson:** I was just wondering because you look at who is out on the lakes, and certainly in the summer there's the regular population of outdoorsmen out there fishing. But in the winter, I haven't seen that much of an increase, and I'm wondering if you guys are seeing it.

**Mr Winterton:** I think it's dependent a bit on where you are. Of course, in southern Ontario, the winter conditions over the last two or three years haven't been great for ice formation, and that has slowed things down.

**Mr Bisson:** It allows them to do it by boat.

**Mr Winterton:** Actually, you're right. It's been going on quite a bit. I don't like fishing in that cold weather myself.

**Mr Bisson:** I'll tell you something: those snow machines go over open water real good. You know what I mean.

**Mr Winterton:** That sounds like the voice of experience.

**Mr Bisson:** These guys know what I'm talking about.

Just a very simple question: what the hell are you guys putting in the bait? They don't bite as well as they used to.

**Mr Winterton:** Trade secrets.

**Mr Spina:** Thank you, Mr Winterton, for your presentation. As you are aware, you've heard it, there's a section in the bill that amends the act that permits classes of motorized snow vehicles and classes of individuals, in fact, to be exempted under the act or its regulations. I wanted to put that on the record for you directly.

**Mr Winterton:** We just didn't want you to think that we didn't care.

**Mr Spina:** I have a question and it really has to do more with my personal lack of knowledge. How do you harvest bait in the wintertime? I'm trying to understand where a bait harvester would use a snowmobile trail.

**Mr Winterton:** They wouldn't use a trail a great deal, but somebody who may be running from his house, if he has an area that's fairly close to where he lives, it may very well be that he would be on a trail for a half a mile or a mile until he branched off into wherever his harvesting area was.

Winter harvesting is difficult. It's a lot of hard work. It's a lot of sawing and a lot of chiselling and a lot of cold hands and a lot of working pretty fast.

**Mr Spina:** So basically you harvest beneath the ice, that sort of thing?

**Mr Winterton:** Yes.

**Mr Spina:** I didn't think anybody would be nuts enough to do that, but I guess if there's enough money in it, of course.



**Mr Winterton:** Interestingly enough, we just had a training session over the summer and we trained about 200 MNR folks, helping them understand the industry a bit more. This is an industry that has generally taken the position that the less you tell anybody, especially government, the better off you are. But they've come to recognize that in today's world, that's not very appropriate. You can't live that way. You have to stand up and be counted or you're liable to get trampled in the rush that's going on. So they've come out quite a bit more about talking about those kinds of things.

**Mr Spina:** I would draw one analogy. I thought it was quite interesting that when you got government involved to the tune of MNR—and this is with all due respect to MNR—your fees went from \$17.50 to \$300. That's perhaps a concern that a lot of people in the snowmobile industry have. Is that a fair analogy?

**Mr Winterton:** I think what it came down to is that it was costing MNR more to administer the program than they were receiving in licence fees. On top of that, there was no money for any kind of research or enforcement or any other components. As I said, this has been a relatively secret industry, but we can't be that way any more. Actually, initially our folks put more money than that on the table right up front. They basically sat down and said, "What is it going to cost to do this job and do it well?" and put that money up. Not to say that there weren't some folks that weren't real happy about that, particularly some of the smaller dealers. Dealers' fees went from \$17.50 to \$150. If they were selling bait on the side, as a service in a small area, in a mom-and-pop store, they weren't really happy about it. But in terms of the long-term survival of the industry, to be a credible, professional industry and to do the job managing the resource, you just have to pay.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** You mention managing the resource. Again, this doesn't relate to snowmobile trails. Is there any evidence now or is there concern of the resource being depleted in any areas? Secondly, are you now under a quota system as far as the catch?

**Mr Winterton:** We've talked about two things that haven't come to pass: one is quotas and one is royalties. As you know, the commercial fishery pays a royalty; the fur industry pays a royalty. Commercial fisheries are under quotas. The bait industry and the bait resource is a bit different. It tends to roll over really quickly. You've got a relatively short-lived species that has a huge potential for increased recruitment in one year, and then it could be affected by environmental situations that would cause a significant decline the next year. So it really requires very close local management.

For the most part, with the bait harvesters—while, as a biologist, I would maybe have gone about learning how to manage bait a little differently than them in terms of the more structured assessment of how to manage—it has still been an iterative process for them. They've made decisions. They might decide to take 10 gallons of minnows out of one spot: "Gee, that didn't work. It'll only

handle five." Over the years, they've learned how to do that. They use a whole bunch of management techniques, such as grading out small ones or grading out the large breeders, the time of year they harvest, the quantities they harvest. So they basically set their own quotas.

With the level of knowledge that's out there right now, to try and sit down in an office and pick out a formula and start putting quotas on licences would be really difficult, because a man might have a fairly large area—30 or 40 Mercator blocks, which are eight by 10 square miles—and he might be harvesting 200 or 300 water bodies. For the government to get involved in trying to regulate the quotas on each of those, and then of course measuring it and enforcing it, would be virtually an impossible job, in my view.

**Mr Barrett:** I just wondered, where are the resources going from this \$300 licensing fee? Is it not into further research?

**Mr Winterton:** Yes, it is. Actually, all of the fee goes back into the bait industry. Some of it comes back to our association to be a professional association. I'm their only employee and I only work part-time for them. The ministry has money going into increased enforcement and increased research as well. We're very comfortable with the partnership and the relationship with the government.

**The Acting Chair:** Thank you, Mr Winterton, for your presentation.

#### CRAIG NICHOLSON

**The Acting Chair:** We will call on Mr Nicholson, please.

**Mr Craig Nicholson:** I noticed the guys on the sound board back there dozing off, so I'm going to take a different seat.

**The Acting Chair:** As suggested, because it's an individual presentation, it is 10 minutes.

**Mr Nicholson:** How come I'm the only one who got told that?

**The Acting Chair:** Because I've been watching the other ones very closely.

**Mr Nicholson:** Is that 10 minutes from the time I start speaking?

**The Acting Chair:** Right.

**Mr Nicholson:** Good day and thank you for your time. My name is Craig Nicholson. I'm here today both as an avid snowmobiler and an individual who earns his livelihood from snowmobiling as a freelance journalist, broadcaster and communications consultant. As the Intrepid Snowmobiler, I have a syndicated newspaper column, appear on radio and television and write for several national magazines. I am also an active cottager and a director of the Federation of Ontario Cottagers' Association.

However, I want to state very clearly at the outset that I am here today to speak for myself and that the opinions I will express are mine alone, not those of any of my media outlets or clients.



I'm certain by now you are very familiar with the OFSC position regarding mandatory permits. I agree with that position and with mandatory permits too. As a snowmobiler who buys as many as five permits in different provinces in one season, I firmly believe that anyone who rides a groomed snowmobile trail should pay for that privilege. I don't want to ride snowmobile trails with freeloaders. I buy my permit. Why should I have to subsidize someone else's snowmobiling too?

1420

With all the fuss over the way mandatory permits are being proposed under Bill 101, I ask myself, "Why are we here today to talk about snowmobiling?" It's not because the world needs snowmobiling. It's not because all of you or your counterparts at Queen's Park or the folks at MTour or the MTO or any other ministry are in love with snowmobiling, and it's not just because the OFSC wants mandatory permits.

We're here today to talk about snowmobiling because it has a proven track record for creating jobs, new opportunities and more economic activity. Snowmobiling is the topic today because it has ushered in a new winter tourism season. This winter season has delivered prosperity to rural Ontario, and especially to northern Ontario, where winter has been a traditionally stagnate time for business and employment. Snowmobiling has helped break the cycle of seasonal unemployment for many people who would otherwise have been collecting UI or even welfare throughout the winter.

You've heard the impact: \$1 billion in economic activity and \$356 million in provincial tax revenues. These numbers are generated each and every year for only a 10-week to 12-week season. It's also noteworthy that this annual economic impact is concentrated in areas of the province that don't have any other substantial revenue-generating alternatives. I would suggest that its real value to rural and northern Ontario is magnified many times over, whereas if it occurred in the GTA it would be an insignificant drop in a very large economic bucket.

Why do you think the northern Ontario heritage fund invested almost \$24 million in grooming equipment and trail infrastructure during the 1990s? Because snowmobiling was the best available vehicle to boost winter employment and business in the tourism sector. Let's not forget that this \$24 million invested by the northern Ontario heritage fund levered almost \$17 million in additional money, matching investment from OFSC clubs. That's a total of almost \$41 million that has been invested in the tourism product since 1993.

Over the past five years, the tourism sector has invested at least \$10 million to promote Ontario snowmobiling; again, not because of snowmobiling per se but because snowmobiling provides the ideal vehicle to anchor a new winter tourism season. So by my rough calculation, at least \$50 million has been invested in the combined product development and marketing of snowmobiling in Ontario in recent years—\$50 million. But during all this period of investment and growth, there has

never been any new source of funding for trail operations. Isn't that kind of like manufacturing and promoting a new car but not buying enough gas to run it?

Why are we talking about snowmobiling today? Because it creates new jobs, opportunity and prosperity, because all this progress is in jeopardy if there isn't new funding to operate snowmobile trails and because the people of Ontario have a \$50-million investment to protect and cultivate, not to squander and waste.

Mandatory permits are one very important item on a menu of new funding alternatives. Other options include snowmobile registration dollars like they have in Quebec, a snowmobile gasoline tax rebate like they have in many states, access to lottery licences and lottery revenues or maybe even an annual operations payment from the northern Ontario heritage fund that would ensure the survival and growth of their existing investment.

I want to highlight three key factors that I believe are pivotal to the discussion today. The first can be summed up as user-play, user-pay. Throughout our society, the user-pay principle has increasingly gained acceptance, from ice time in hockey rinks to municipal recreation programs. What else is the green fee for a game of golf but a user fee? The same goes for everything from theatre tickets to the price of a Blue Jays game. It's all user-pay. Those who want to participate in the activity, pay to do so. Those who do not choose to participate don't pay anything. Mandatory permits do not reinvent any wheels, and there is no need to reinvent the user-pay system either.

The OFSC has a sophisticated permit system in place that only requires the legitimacy of legislation, not the interference of bureaucracy. I, and many snowmobilers like me, will be very disappointed if this process does not give the OFSC the ability to ensure that there are no freeloaders on the snowmobile trails we ride. That means either mandatory permits or unequivocal land use permission where OFSC wardens are authorized to lay trespass charges on all OFSC trails on crown land. Reaching this objective should be a simple, straightforward process. Why is it being made so complicated under Bill 101?

The second key factor I want to highlight is snowmobile trails being taken for granted. Many people seem to think that groomed trails appear magically each winter, always have been there and always will be there. That's why some argue that OFSC trails on crown land should be free, while ignoring the millions of dollars in improvements and maintenance without which those snow highways would be as impassable as the rest of the wilderness. Taking trails for granted explains why some tourism operators expect free trails to their door so they can make more money from snowmobilers, but ignore where trails come from and how to pay for them.

It speaks to why traditional users overlook the comfort, convenience and safety of OFSC trails to complain that they shouldn't be charged for their passage, even though grooming is the only reason those trails are easily accessible and navigable in the first place. Taking trails



for granted allows tourism representatives to market the product while ignoring any responsibility for increasing the burden of trail operations.

The plain and undeniable fact is that all the tourism, all the economic impact, all the jobs and all the opportunity flow from groomed trails. It's time to officially acknowledge their importance and ensure their operational sustainability. Bill 101 is a big step in the right direction, and legislating mandatory permits will legitimize snowmobile trails. But this only works if it does not undermine the OFSC at the same time.

The third and last key point I want to make is that this province should be celebrating and showcasing the success of OFSC volunteers and clubs. It should be doing everything reasonable to ensure their continued progress, because of what snowmobiling delivers to countless families, rural communities and the economy of snowbelt Ontario. Can anyone think of any other non-profit, volunteer organization that achieves anywhere near the same level of tourism or recreational success? Does anyone honestly think that any government agency, ministry or private sector company could operate as cost-effectively and deliver groomed trails as reliably? Shouldn't what the OFSC has achieved for 30 years be what the province holds up as a model, encourages others to emulate and sustains in every way possible?

The whole point of the mandatory permit exercise is to create a new source of sustainable funding for trail operations so that snowmobile trails can continue to generate benefits for the entire community and so that winter tourism can continue to flourish. Let's not lose sight of this very necessary and important goal. There is no other viable alternative to snowmobiling as an anchor vehicle for winter tourism.

Chair Joe Spina and the interministerial task force have given us an excellent opportunity to secure all the economic gains that have been made through snowmobiling and to seize the promise of an even brighter future. If mandatory permits and/or some other form of sustainable funding are not forthcoming, I will always be able to find someplace else in Canada to go snowmobiling on world-class trails. But if Bill 101 is allowed to achieve its sustainable funding intent, while leaving OFSC authority over the user-pay system intact, then all of Canada will be joining me to snowmobile on the very best world-class trails in this country right here in Ontario.

**The Acting Chair:** Thank you very much, Mr Nicholson. We have about a minute and a half left. Rather than going to the three caucuses, do you want to use up that minute and a half with any additional comments?

**Mr Nicholson:** This was so well-rehearsed.

**Mr Spina:** Off the script.

**Mr Nicholson:** Yes, right. The bottom line on this is we've got a bunch of willing partners, who I think are all trying to accomplish the same thing. I don't think there's a whole lot of disagreement on what the issue is.

What we seem to be getting hung up on is the process. On one hand we've got the OFSC, as Bruce Robinson has said, with a bunch of independent pioneer types, the kind of spirit that has brought this province to where it is, and we don't want to quash that spirit. On the other hand we have the government of the people, which has a way of doing things that's been established over years of rules and regulations. Those rules and regulations are supposed to be there to facilitate what the people are doing, not to squash what the people are doing.

The way I read what's going on with Bill 101 right now is that the MTO is trying to take over the permit system from the OFSC. Why, by any imagination, would you even consider turning something over to a ministry that has no experience whatsoever in trails, in permits, in volunteers or in snowmobiling? It doesn't make any sense by any stretch of the imagination. I don't know if that's a minute and a half.

**The Acting Chair:** You're pretty close, sir, and I thank you very much for your presentation.

**Mr Nicholson:** Thank you very much for having me.

**Mr Levac:** On a point of order, Mr Chairman: Is there a possibility we can get a copy of the presentation?

**Mr Nicholson:** Yes, I gave it to the clerk. I just didn't want to give it to you beforehand because I didn't want you reading what I was going to say before I blew it.

**The Acting Chair:** Thanks, Mr Nicholson.

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#### LORNE BURDEN

**The Acting Chair:** We'll call on the next presenter, Lorne Burden, please. Mr Burden, you've got 10 minutes, by presentation and/or questions.

**Mr Lorne Burden:** Good afternoon, and thank you for allowing me the opportunity to speak before you here today. I was always off working in the bush during the Lands for Life/Living Legacy consultations; hence I couldn't present directly to a committee who were involved in a process which would impact the mineral explorationists of this province. But my schedule permits me to do so today.

My name is Lorne Burden. I'm a professional geoscientist and an independent prospector. I suspect that many of the concerns I will express on my behalf will parrot those of other traditional crown land users like hunters, trappers and fishermen, and probably as well private cottage owners, hunters, camp owners and just general landowners. All of these snowmobile users have been accessing much of northern Ontario for many more years than any snowmobile club has been in existence. However, since the inception of the groomed trail program, there has been a lack of harmony and understanding between traditional snowmobile users in the pursuit of a living or other recreations with those who ride trail for pleasure.

It is probably clear to you by now from the proceedings to date that there are three very different snowmobile user groups within this province: a group



that uses them as a tool for accessing job sites, a group that uses them as a means to access recreational sites, and a group that uses them solely for pleasure purposes.

The first two groups have been accessing crown lands in the winter by snowshoe, ski, dogsled, and now by snow machine much longer than this country has been in existence. These are traditional year-round users of the trails and roads which access crown lands as well as private lands throughout the province. To these people the snow machine is used as an ATV or a truck or a boat would be used in the summer. It's simply a tool used to simplify access to traditional areas. To these users, the snowmobile is a means to an end.

For the last group, the pleasure rider, the pursuit of their enjoyment starts and stops on a groomed trail on the back of a monster snow machine. To these pleasure riders, the snow machine is the end.

It is clear that these are indeed very different user groups.

When the groomed trail network was initiated, many of the routes chosen for improvement were existing trails, forest access or logging roads that have been available to traditional users for many years. In fact, many of the traditional users regularly maintained and still do maintain sections of roads and trails over which they regularly travel. There were no formal consultations with traditional users when these existing trails were taken over to become parts of routes currently managed and groomed by snowmobile clubs. Now many traditional users will be asked to pay for a program for which they have no need.

It is important that this committee find a way to recognize within this act that prospectors and explorationists are traditional crown land users so that we may continue to be exempt from any system of permitted trail use.

I have long recognized that there are many people who use crown lands in both the summer and winter. I, and most geoscientists like myself, have as a common courtesy always worked with local user groups so as to least impact crown lands for the enjoyment of all, and this includes local snowmobile clubs. However, I would like to point out that the provincial Mining Act has a great deal of bearing on what we mineral explorationists must do and when we must do it. This same act tells us to carry out our exploration programs in ways that are efficient. As many of you should know, in the business world efficiency is equivalent to cost-effectiveness.

I do not own, nor do I desire to own, a snow machine. However, as needs arise I do rent machines, sometimes as many as four at a single time for a job. Should I be running more than one job at a time, trail permits could become quite expensive. In this case, it would be more cost-effective and, I might add, more comfortable for me to take a D6 bulldozer and reopen that section of trail or forest access road that I need for truck use. If I am forced into this action, I am sure that local snowmobile clubs as well as the OFSC would not be happy.

In this particular example, you can clearly see that the expense of a trail permit to traverse areas that have al-

ways been open to mineral explorationists is as unwarranted as the need for a groomed trail. However, by my using snow machines on a portion of these groomed trails, I would be minimizing the impact on the enjoyment and experience of the pleasure riders.

Now, as a traditional crown land user dependent on continued access to crown land to make my living, I am also concerned about how this act and supporting regulations could be manipulated or used as a precedent when other special interest groups proceed to declare or obtain ownership of trails through the land-use permit process. Exclusivity to the access of the remaining non-alienated crown lands within the province goes against the principles and spirit of the Lands for Life/Living Legacy documents. If this land alienation continues, it will lead to a further reduction in mineral exploration expenditures and the number of prospectors working in this province, and ultimately the loss of a \$5-billion industry.

Furthermore, I would like to know what considerations are being given to areas of high mineral potential or, as they say in the Lands for Life documents, "provincially significant mineral potential," prior to granting of any land-use permits. What are the guarantees that special interest groups will not attempt to restrict access or assess further fees on traditional crown land users who use the trails and old roads during the summer months? With respect to prospectors and mineral explorationists, we have never asked the snowmobile clubs to help us financially with building our roads and trails for exploration ventures. I ask you, why should we pay them to use trails and roads already paid for by our own sweat, money or tax dollars to access lands we have every right to access under the current laws of Ontario?

As I indicated before, we have three entirely different groups who make use of the vast network of trails and roads that cross crown land. Two of these groups use these trails year-round. I believe all of these groups should be treated differently within this act.

In closing, I have no beef about assessing a user fee or permit to any who choose to ride OFSC groomed trails for pleasure. However, prospectors, mineral explorationists or any others traveling in pursuit of their occupation or profession must remain exempt from purchasing or having to apply for any kind of permit or paying any kind of fee to cross or use OFSC trails located on crown lands. This exemption should be stated boldly within the text of the act. In the case of those in my profession, proof of our eligibility can be provided by showing a current prospector's licence issued by the province of Ontario.

**The Acting Chair:** Thank you very much, Mr Burden. There is about a minute for each caucus, starting with the NDP, which is not here. I'll move to the government.

**Mr O'Toole:** Thank you very much, Mr Burden, for your presentation, bringing the perspective of the prospector. We have heard from that before and recognize that under section 9 of the bill there is the exemption



provision, under "Classes," in regulation. I just want that on the record. You should be aware of that. It came to our attention when we were in I believe Timmins and Dryden that there would be requests for exemption. Just dealing with the prospectors—and for the record, our researchers provided us with this; I have no brilliance on my own without them.

Prospecting licences today: for you to prospect, perhaps you could educate me and the people here listening today about what is your fee and other kinds of costs. We've heard from the bait fisher people today that it went from \$17 to maintain a resource. The Ministry of Natural Resources does recognize the importance of our natural resources, including the minerals that you spoke to. What is your fee and what are other costs for you to conduct your business on publicly owned crown land?

**Mr Burden:** The actual fee for a licence, I believe, is \$5 per year, which is peanuts compared to the \$300 they are asking for the trail permits. However, when we do stake claims, we're required to expend a minimum of \$400 per year on each claim, so we do have to work on our claims.

To step back a moment, you were mentioning that this exemption is going to be in the regulations. Regulations change at the whim of the current government. If it's stated within the act, it takes a lot more to get exemptions and changes done to things. I prefer to see it in the text of the act that prospectors—

**Mr O'Toole:** If I may, Mr Chair, that has been brought up before, that if we state it within the act itself for the traditional users, work-related users, you're right; it would sort of enshrine it. It doesn't preclude the possibility of any government amending the legislation, but certainly, as you've pointed out, the regulations are more easily amended after they've been gazetted.

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**Mr Burden:** Then they could get amended without consultation, and that's a fear I have. I've seen it happen before in parks.

**Mr Levac:** Are you aware that the official position of some of the presenters of local clubs—and I believe that means they're speaking on behalf of OFSC because they're elected—that they have indicated a willingness to understand that there will be exemptions and that they are not speaking about everyone buying the permit?

**Mr Burden:** I understand there's the exemption for traditional users. I just want to be recognized as a traditional user.

**Mr Levac:** Right. That's why you're here today.

**Mr Burden:** Yes.

**Mr Levac:** I just wanted to know that you're not on a different wavelength.

**Mr Burden:** No, I understand. As far as pleasure riders, people who go on the trails to use the trails, I have no beef about anybody paying for that. I think they should be paying for it. They're getting a service provided to them, those trails groomed. However, I don't need it.

**Mr Levac:** Right. To do your job.

**Mr Burden:** To do my job. I would like to work around it.

**Mr Levac:** One of the presenters had indicated "within reason." When I pressed him, "What do you mean by 'within reason'?"—it came out again today. We're talking about somebody who does a job, goes in, goes out, a certain length of time. But if they end up with a different type of snowmobile that's not necessarily needed for the job to get from point A to point B and they're going across the province and they're not doing geographical studies of the entire province and they ended up saying they've got to do both, that means they're combining the traditional work and they're doing some pleasure riding at the same time.

**Mr Burden:** I would think that person's a pleasure rider. He's not working.

**Mr Levac:** So the "within reason" comment would be acceptable to you. You're saying you want to make a distinction and show that there's a reason for being a traditional user, some kind of sticker process or identification.

**Mr Burden:** No. I don't want to have to go through that. We go through enough red tape as it is to work in the bush. It's difficult. If I have to go to every snowmobile club in the province to get a sticker, it's a pain in the butt.

**Mr Levac:** I didn't imply that it would be place to place. You would receive some type of thing or use your licence of some sort after you've been recognized in the legislation as a traditional user, which is what you're seeking. If you're on the trail and a warden says, "Can I see your permit?" and you say, "Here's my traditional licence," or whatever it is, that's what I'm saying is the thing, some kind of identification.

**Mr Burden:** That would be a very simple way of doing it. I have a prospector's licence here.

**The Acting Chair:** Thank you, Mr Burden, for your presentation.

#### ONTARIO FEDERATION OF SNOWMOBILE CLUBS, DISTRICTS 2 AND 3

**The Acting Chair:** We will call on the Ontario Federation of Snowmobile Clubs, districts 2 and 3. Please identify yourself. You have 20 minutes on presentation and/or questions.

**Mr Tom Sheppard:** Thank you very much. I'm Tom Sheppard, the governor of district 2, which starts just north of town here. I'm also here on behalf of my counterpart, Dave Phasey, who's the governor of district 3, where we are today. I have with me Jerry Rintoul, the operations director from district 2. He has a presentation to make on our behalf.

**Mr Jerry Rintoul:** My name is Jerry Rintoul. Who I am, where I come from and where I've been is on the paper that you have. One point is that I grew up on a farm where hunting and trapping and fishing put food on the table when I was less than 15 years old.



When I first found a groomed trail, I happened on to it because I was out going somewhere, and I rode the whole thing within two days. I would have ridden it all the first day but I had to be home for some reason. Once I found that, I thought: "Gee, this is it. Who's done this? Who's gone out there?" Within a week I had paid a membership and I've been involved ever since.

I'm involved with the Somerville and District Snowmobile Association, which is one of the clubs in district 2. They started developing trails in our area about the same time as municipal councils and groups started going to politicians and so on to get snowmobiles banned from the whole countryside—"Noisy, stinky, they think they can go out at night and drive by my house on the road," or something like that. That sort of thing had just started, and at the same time, some people who were on snowmobiles didn't want to be painted as that type of person and started working on clubs.

In our county there was a large tract of county forest that a group traditionally rode in on the weekend. There was someone else who didn't want them to ride there because they wanted to ski or snowmobile there and not see anyone else. Eventually we developed trails. Then we eventually joined those trails with our clubs' trails.

In Victoria county there are no trails on crown land. There's a very small amount of crown land, and any there is, it's a 100-acre lump. Some of them have mining on; some have—and you can't get to them anyway. They're landlocked. So we deal with private property owners. We also deal, for almost half of our trails in Somerville, with the county itself because they own a county forest and they also own a rail bed. We have a legal agreement drawn up with them to maintain trails on this thing.

The rail bed has been there since 1991, and the club has put \$200,000 worth of improvements into that rail bed—one snowmobile club.

Last year, within the county forest we developed 4.2 kilometres of new trails to eliminate about 1 kilometre of running snowmobiles down in the ditch or down the shoulder of a highway. It was a 500-series highway, but it has always been an unsafe situation. The cost of that trail was \$13,000, within \$500, which is \$3,000 per kilometre.

On top of that, we spent another \$30,000 last year on trail improvements within our area, mainly on heavy-duty brushing equipment to keep this railroad bed from totally growing in.

I remember a few years ago in my classroom, because I taught school for 32 years, I taught in an auto shop with a different class of people than some people meet every day. Some of these fellows were around 14. They were having tremendous physical changes and getting drivers' licences while I was trying to deal with them. They were arguing about riding trails, "We'll ride here; we'll ride there; we won't buy permits." One of the gentlemen, who was more rustic than some, said, "I don't care what you say, but once you don't buy the permit and ride the trail, that is where you will want to ride." He was a member of our club for quite a few years, through his teenage and

into his early twenties. That was his point. He's the kind of guy you might not be able to catch if you had a police cruiser and were trying to catch him, but that was his view about trails.

We have mostly private properties and trails that are on municipal properties and signed up, and a bunch of trails on road allowances which are not signed up, and you're not allowed to ask them when they buy a permit on that particular thing, and they know it. They say, "This is a road allowance; you can't do anything to me." We used to have a number of those people. We even got to know who they were. We could see them coming down the trail and we didn't even stop them. They've all disappeared. They're just not around any more. They've either gotten rid of the thing or they have joined up. We have very few people on our trails who are freeloading any more at the times that we are out there. Since a lot of the volunteers work, they're not out through the week, and we're not out there at 2 o'clock on Friday night and Saturday night, until we get a STOP officer program.

Within district 2 we have eight other snowmobile clubs besides ours, and some of those clubs do have a lot more crown land. We get into the area of Bancroft, we get north of Buckhorn and all the way over to Kaladar, and there's quite a bit of crown land in that area, and some of those trails are on forest access roads and in various places like that, so their situation is somewhat different. This mandatory permit would affect them perhaps more than my own club.

One club in particular has a lot of crown land. Where you have forest access roads and things like that, especially if other groups want to use them, they develop their own trail away from the road—often within sight of it, but away from it. So the groomed trail does not very often follow some path that was there before they started, and they did that intentionally. They solved the conflict problems for safety and also say, "We developed this trail; this trail wasn't there." In fact, if you travel around the country within our area and you knew exactly where the trail went 20 years ago, anyplace there's some kind of obstacle, like hills or drainage and that kind of stuff, many of the clubs have moved those trails and improved the point.

My point in saying that is that if Uncle George went through there 45 years ago on his snowshoes, he did go through to such-and-such a lake or over to Joe's house. He didn't necessarily follow the path that's been improved and is maintained now.

District 3—we're speaking on behalf of them—is south of Highway 7. They have a lot of crown land. In fact, the first two speakers would have been from district 3. They deal with a couple of large county forests or municipally owned forests, road allowances, a railroad bed and private property owners.

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I think it's fair to say that in district 2, and to a certain extent in district 3, we're somewhat like the people from Kemptville. We have a very high compliance rate with trail permits. One of the clubs in our district, when this



first started, would not confront anyone. They would stop them and say, "Wouldn't you like to contribute?" Other clubs would stop you and say, "You will buy a permit or you will turn around and leave," what I call more in your face.

We do not sell very many permits out on the trail any more in district 2; in my own club, probably less than 20 out of 800. We also sell a lot of permits for the amount of kilometres of trail we have, and we've come close to being able to pay for things. So when you talk about Kemptville with 200 or 300 permits, most of our clubs are talking 800 to 1,000 permits, some in excess of that. We can pretty well fund ourselves that way, but I know a lot of other places that can't. The amount of kilometres, the number of people, a big Toronto influence—they buy permits.

Moving on to opposition to Bill 101. We questioned whether we would speak against what other people presented, but because I'm a member of the Ontario Federation of Anglers and Hunters, I've put it in.

I've read four different articles in the magazine that I receive from the Ontario Federation of Anglers and Hunters. They were opposed to mandatory permits for various reasons, so I phoned them up. One of the articles says, "OFAH needs your input." This is August 2000. I tried to find out what law they were speaking of, because I presume we're talking about somewhere in the snowmobile act or the Trespass to Property Act, because it says the law says this. They couldn't tell me what law they were talking about. I believe that some of the land use permits have restrictions on them but it's not written in law that I could find. They couldn't tell me.

I asked if the OFAH knew about land use permits for snowmobile clubs and the gentleman who spoke to me didn't seem to understand. I said, "Do you understand it with logging and mining?" "Well, yes." I said, "It's the same thing."

I asked if they'd like my input and he was quite put out that I called him, because several snowmobile groups or people or whatever had called him. I'm a member of the OFAH and I wanted to give my input. They asked for it, but they didn't want to hear it. I asked why they were doing this and they said, "Our members asked us to." So I said: "How did you find out from your members that they wanted you to do this? Did you survey them?" He said, "Well, yes." I said, "Well, how did you miss me?" "Well, we didn't exactly survey them," and so on. He said, "This came from up north," and I said, "Did you do a northern survey?" "Well, no, not exactly. There's a lot of crown land up there, though."

As an OFAH member I was very disappointed in how much research they had done into how the OFSC would operate and how this would work. I was disappointed that he wasn't interested in having a little bit of input from the other side and I was very disappointed when I said, "I've worked in district 2," which is a large area right on Peterborough, "and any time you want some information on snowmobiling and you have to work with somebody, I

will assist to help." The gentleman did not even ask me for my phone number.

There's an article in the federation magazine of July 2000, and a person named Bob Allen writes: "Traditional access has been to follow the logging companies. As new roads are created, there are others that become impassable due to washouts and beaver dams or they just get overgrown by trees."

This article is looking for the logging companies to be forced to leave bridges in place. I guess logging companies have looked at economies and are taking the bridge with them when they leave an area. It's portable; they pick it up, put it on a truck and put it somewhere else. I view that as, the OFSC is not the only group the OFAH wishes to benefit from.

In September 2000, it says, the Ontario Federation of Anglers and Hunters opposes the snow job. In this article they start saying that persons who use trails for work or to get to residences should not have to buy a permit.

First of all, I do not know of any person in our area who has been denied access to their residence for the want of a trail permit. I suggest that if you buy a cottage and, when you buy it, it is not winter accessible because no one plows the road there, the township hasn't assumed the road, or whatever the reason is—when you bought it, it wasn't winter accessible. Because somebody in the area somewhere put a snowmobile trail in, your cottage is still not winter accessible, and if you want to access it, we should not do the work for you to get there. I do not believe that we have very many trails in district 2 that run on cottage roads. Riding them, I don't see that happening. More and more, we remove them from even water or portages.

My friend Ernie Jordan goes to Smooth Rock Falls. That's a fair distance from here. When they get on Highway 11 somewhere near their moose hunting camp they could drive another 80 miles or they could unload the snowmobiles and take a short ride to their moose hunting camp. So they tried the trail. It was in March last year, the middle of March when all the snow in Ontario had melted, but the trail had maintained its base and the trail to the hunt camp was in excellent condition. So they rode snowmobiles to the camp. They fished the next day. Nobody else was fishing. The next night they go down to visit one of their friends who lives up there and say, "Why aren't you guys out fishing?" They said, "The trails are no good." They said, "The trails are excellent." Within two days 30 local people are out fishing.

Ernie Jordan lives in Lindsay; he runs a business. He would have had trail permits on his snowmobiles; I'm not sure about the 30 local people. But my point is that they were really interested in fishing as long as the trail was there for them.

A few questions: what are all the hunters legally hunting from December 15 to April 15? As far as I know, maybe rabbits and maybe wolves. Most of the wolf hunters in our area drive around in their half-tons with radio tracks on their dogs and they go to the next road



and the next road for a while until a wolf is—the work is done by the dogs.

What is a traditional angler and hunter, and am I one? I believe I probably ate muskrat before I was five years old. I don't view that I am one and I don't know how many are. Does a 30-foot strip out of the vast wilderness of northern Ontario for a snowmobile trail stop other people from doing their thing? I can't see how, when I ride up there, that it should make that much difference to anyone.

When you talk about exemptions, I look back on some TV programs I've watched lately on the effectiveness of handicapped parking stickers. They don't seem to cost very much, compared to paying \$130 for a permit. It seems that if I try to chase down some of the people who have them, I'm just getting too old to be able to catch them.

My contention is that the OFAH did not ask their members on what they're presenting here. I also suspect that a lot of OFAH members are like myself. I can pick about four out of the OFSC executive material. We've done a survey that shows that people who snowmobile and buy trail permits do a lot of other outdoor things. They're the type of people who will join the Ontario Federation of Anglers and Hunters to have them do the job that needs to be done on various things.

Trails without maintenance disappear very soon and are not around forever. If we go out there and we try to do four miles of trail and we think we're just going to take our snowmobile and ride through the first time, we sometimes are there for a day because you just don't go through. That trail doesn't exist. There are trees across it and lots of things that happen.

Haliburton county has apparently been trying to find a trail that goes from Minden west to Gravenhurst, which was a road. They can't even find where it is in the bush.

Number 3: some very important trails in northern Ontario I think would cease to exist unless the clubs there can find a way to support them. You've got 300 kilometres of trail and 30 members at \$120 a member. You don't have a hope of making it.

If you take your snowmobile off the trail in Timmins and Cochrane—and I've been there—you get maybe 100 yards, maybe 200 yards, maybe 50 feet till the thing is stuck and you just about need help to get it back to the trail to go. So I don't understand how people were going around if nobody made a trail. I can understand if the gentleman went every snowfall and packed it down, but we don't get very far when we decide to explore.

It costs about \$400 to maintain a trail. It's a user-pay system, and if you're riding a snowmobile on the trail, you are a user. A lot of bridges and infrastructure have been put in place by snowmobile organizations because we've made it safe to get through these places. There's always a hazard. We had one on our trail called the hellhole. Everybody who made it through the mud hit the tree at the other end. The hellhole doesn't exist any more. The trail is still called the hellhole trail, but the bulldozer

went up the side of the hill away from the drainage problem and built a decent trail.

When I said to the OFAH, "What about a bridge that costs \$200,000 that you want to use free?" they said, "Nobody asked you to put in there." I contend that we have been asked to put all these bridges there. We paid \$50,000 to put one bridge that was a 100 feet long on Victoria county property. It was actually \$54,500. We were asked by the warden of the county to improve that situation. They found some federal government money and we paid half. The county didn't put a cent in it. We paid half and federal government infrastructure funds did the rest.

#### 1500

Every time there is a death, there is a lot of noise. Eventually that situation, if it was caused by something that can be improved, gets improved, and indirectly we're being asked to improve that situation. They nail us on TV every time there is a death.

Anglers, hunters and hikers and many other people benefit from the trail all year long without contribution. The sad part about our 4.2 kilometres of new trail is that it isn't on our map yet, but it is on the Ganaraska hiking association map already. They couldn't have walked through there last year. It took us four days to walk through there hacking out brush to even find it.

A licensed trapper is easily identifiable and may deserve consideration. But in our area, he seems to put his machine on his truck and go to where he's doing the trapping, and if he needs a mile of snowmobile trail to get to the trap site, he does that. He comes back, loads it up, puts his catch in the truck, turns the heater on and drives home. I'm not sure how much you can do that.

A trail permit is the cheapest part of snowmobiling. Anglers and hunters are more interested in angling and hunting when there's a good trail to the angling and hunting. I've spilled a lot of minnows out of trailers behind snowmobiles trying to go fishing somewhere, because it used to be rough.

I wrote one note here: In district 2, some 300 visitor permits were purchased two years ago.

Any questions?

**The Acting Chair:** Unfortunately, Mr Rintoul and Mr Sheppard, you have used up your 20 minutes. I thank you for your presentation, and certainly we appreciated it very much.

**Mr Rintoul:** I hope we presented a different slant from a snowmobile club.

**Mr Spina:** On a point of order, Mr Chair: For the record, I hope the OFAH representative sitting in the audience heard this presentation.

**The Acting Chair:** That's not a point of order, Mr Spina.

#### LOFORNA ROD AND GUN CLUB

**The Acting Chair:** I'll now call on the Loforna Rod and Gun Club—I may have pronounced this wrong. Mr DeGroot, you have 20 minutes for either your pres-



entation and/or questions. Would you identify yourself and carry on, sir.

**Mr Ralph DeGroot:** Thank you, Mr Chairman and members of the committee. My name is Ralph DeGroot. I'm a resident of Peterborough. I also happen to be the secretary and trustee of the Loforna Rod and Gun Club. Loforna is an acronym, two letters of three words, "love for nature," and with your permission, in a minute I'll explain what that implies.

I understand that you've had an opportunity to read the letter we wrote on August 2, 2000, addressed to a whole bunch of people, including Mr Gilchrist, as well as the committee clerk and our local member of the Legislature. Otherwise I'll have to go over all that again.

I have five brief points to make to you in the time allocated to me. A few brief comments about the letter, and secondly, who we are—we'd like to explain that even more particularly now after listening to the last speaker, who has it all wrong, and I'll get to that. We also want to illustrate to you that we support the bill, strangely enough, but we want to give you one example, in our case about our people and the real world impact of the legislation as it stands at this minute. The fifth point is a question to the committee, perhaps rhetorical: How can we be accommodated in the legislation?

The letter on August 2, 2000: We were motivated as a club and held a meeting as a result of publications by the OFAH, of which our club has been a member ever since I can remember. They alluded to some of the risk factors inherent in the bill. We took very kindly to that, discussed it at our club and I, as secretary and trustee, was asked to write the letter. We're also a dues-paying member of the Ontario Woodlot Association, based in Kemptville, and that will become clear in a minute.

The second point: Who are we? If you permit me briefly to illustrate to you that a name can be misleading, we are the Loforna Rod and Gun Club, and I don't need to explain what picture emerges in your mind. But is that all we are? I think it would be helpful if you allow me a few minutes, seeing that it's my time anyway, to tell you who we are. We are the largest single-block private woodlands owner in the area in question. Since 1964, we have owned 1,100 acres or, if you wish the metric system, 455 hectares of land in the former Anstruther township, which is now, as you may know, part of North Kawartha township. We have a demonstrated record and reputation of over 35 years of goodwill, harmony and care for the environment, as well as co-operative relations with almost everyone we have reason to be in touch with or they with us.

We have completed two multi-year—and by "multi-year" I mean 20 years and 15 years, respectively—woodlands management contracts with the province. And as we speak, we are still following the province's wildlife services plan that was created for our holdings, under which we manage and take care of the wildlife present on our property.

We maintain, voluntarily, 12 one-acre patches, each ranging from one half acre to an acre of seeded special

clover as a source of supplementary feeding for deer in the early spring. We have agreed with MNR to maintain with our own labour and at our own cost an one-acre patch of experimental clover that they are experimenting with in terms of what effect or non-effect it has.

We have created brush piles on the shores of our 22-acre pond—we call it a pond because we don't want to overstate it; some people might call it a lake—to promote nesting. We can't count them any more but I suggest to you we have placed hundreds of wood duck nesting boxes throughout our property. We have drained an entire swamp, which is now a meadow that people from one of our local colleges take their students to, to see what can be done with a swamp area in transforming it into a meadow, and we have an agreement with a trapper to responsibly manage the beaver population on our holdings and in our land.

All of this used to be done strictly with assistance advice of departmental resources. But as you know, and I won't go into that, certain laws or policies changed and they are no longer available to us. So at our own cost we have our own professional forester and we continue to follow the original woodland management plans.

We are an extremely co-operative bunch, I would like to think. We fully participate in the ongoing bear population survey which is conducted on our lands and our holdings, and we are assisting the University of Guelph with respect to a number of environmental studies that they do.

That is what we do as the Loforna Rod and Gun Club. I hope that at least I have created for the committee a picture that we are, in the common vernacular, not just a bunch of guys running around with guns on our shoulders, although we love hunting. But we are much more than that, and it's in the context of being much more that we appear before this committee.

At our club, all 16 charter members support the notion or the principle that recreational use of groomed trails should be contributed to by the user. We have no problem with that, and I know that's the intention of the bill. We support that. We think that's a wise thing to do.

#### 1510

But what is the impact? We have experience with the groomed trail. What is that experience? When we purchased these lands in 1964, to the best of my knowledge—I stand to be corrected if someone knows more—the advent of snowmobile clubs and groomed trails, if it was there, was on a very limited basis, but certainly not where we are. There was really no access to our lands, which contains a hunt camp that we have, over the years, developed into a wonderful facility for year-round use. Access in 1964 was on foot. There was no roadway, no nothing. There was the lowest of denominations of identifiable access, which was an old horse trail that was used in the old days for some limited logging that took place. The reason is that we are completely surrounded by 30,000 acres of crown land. One lake is completely owned by us and another lake on



which our property borders is known under the name of Round Lake.

However, shortly after our ownership commenced, certain events took place. I don't think they are important to the committee, but I will just state them briefly. The lands and forest department, as it was then known, decided to expropriate a 60-foot road allowance straight through the middle of our property. The excuse given to us was that it was a fire access route. I don't know how important it is to you, but otherwise things may not be as clear.

That was done by lands and forests, as it was, but the action required the actual expropriation to be undertaken—or they caused it to be undertaken—by the township, at that time the township of Anstruther. The deal was that the township would expropriate the land, that lands and forests would build the so-called fire access road, and after 20 years, that road would revert to the township.

There are other laws. I am not a lawyer, so I'm not experienced or sufficiently clear on it, but just because somebody says that's your road, a township doesn't have to accept responsibility unless they spend money on it. The township never did, so it's called an unassumed road. That's the road in question, because that's the only way we can get to our camp.

Years passed by. We welcome snowmobiling. We think that's a great sport activity, the outdoors. We see nothing wrong with it. But our problem is that the current groomed trail lies over the access road that we need to get to our camp. It is nothing but one hassle. It is such a hassle that with the advent of trail wardens, they set up a roadblock. We have to argue our way through to demonstrate that we have the need for access because of the programs that I've outlined to you. We use our club facilities in that area all year round—for hunting but not necessarily for hunting—for all the other activities, tree marking for the limited harvesting of trees that we do. We do that in the winter on snowshoes.

How do our people get in there? They get in over what is now the unassumed road. I do it with my four-wheel drive. I don't even own a snowmobile; some of our members do. But we all have to go through the same checkpoint or—whatever word you wish to call it—roadblock in order to get there.

It got so bad. Let me quickly, before I go any further, assure the committee that nothing has ever happened. It's a verbal confrontation. We went over, because we wanted to avoid this, to issue each of our members an ID card stating that these are the lands we own. Besides that, the road runs over our land, if you will. It's expropriated now. We'll get the excuse that the road in winter is ours, and how you get to your camp is your business. This is literally what they say. It depends on the personality on duty at the time.

In the final analysis, we have never been stopped from getting to our camp, but when you take the legislation that you have placed before us, we see nothing but a problem if you're going to add to it without an exemption

being provided in our case. However Legislative drafters can do that—it's not my job. I think my job is to draw to your attention a real-life or a real-world problem that says we believe that we have a justified position to say we were there long before any organized snowmobile effort was in the area. We used the access to our camp, and there is no other access to our camp. We should not be in any way even challenged on being on what is an access road, assumed or unassumed, even though we acknowledge there is a trail on it, and even though we have other means, meaning four-wheel drives, and some of our fellows use ATVs. It depends on what point in the season we're talking about. The snow is not always two feet deep.

We keep running into that, and we believe that the illustration of this real-life problem is enough to ask this committee, and hence our appearance before it, how you see that we can be accommodated in this legislation, because we strongly believe that for what we do, we should not have to pay \$150. We are paying enough as it is for all the various other things that we do.

That's the point of our presentation, Mr Chairman. I'm open to any questions. Don't be afraid of the file. I just brought that to look important and in case there were any difficult questions.

**The Acting Chair:** Thank you, Mr DeGroot. There is about a minute and a half each for each caucus starting with the NDP.

**Mr Bisson:** I want to understand what you are getting at here. You have land on which there's a road allowance that was expropriated. We don't want to go through that story again. But the point is, you're saying the snowmobile clubs don't allow you to use your own road?

**Mr DeGroot:** Yes, that's exactly what I'm saying. Their trail runs over that road.

**Mr Bisson:** So what would happen now if I was a member of your club and I got on the trail with a snow machine and I went to my club and I didn't have a trail permit?

**Mr DeGroot:** I thought I had illustrated that by telling you that they have roadblocks, not necessarily right at our camp but on that road, and they challenge the living daylight out of us and tell us that we have no right to be on that road because it's their road in the wintertime. That's not true, under the Road Access Act and any other act.

**Mr Bisson:** We'll take the point under advisement and we'll look at that when we draw up the legislation.

**Mr Spina:** Thank you, Mr DeGroot, because I think it was an excellent, invigorating and passionate presentation, and I appreciate that. We learned something.

Let me assure you that the informal discussion paper that preceded the creation of this bill and also preceded the creation of the interministerial committee received input from rod and gun clubs, anglers and hunters. In fact, the Peel Rod and Gun Club is three blocks from my house and it's 700 members strong. I know a lot of people in the organization, they are good friends and have made no bones about giving me their input. In fact,



if I had any criticism, it would be of the central organization itself.

But I wanted to assure you and your members that, as a result of the response that we did get, there is a section that was put into the bill that amends section 26 of the Motorized Snow Vehicles Act and the Highway Traffic Act and it says regulation-making power is provided for authority to create classes of motorized snow vehicles and to exempt such classes from any provision of the act or regulations. Further, regulations may also be made general or particular, and different classes of persons may be identified for exemptions from the act or regulations. I just wanted to assure you that has currently been put into the bill itself.

Lastly, with regard to perhaps the zealotry of the snowmobile club on that particular issue of unassumed road, in Bala we had an excellent presentation—Dave, if you recall—from an individual that was very involved in unassumed municipal roads and rights of way. It's an issue that we have to try to address in the bill to determine the legality and the enforcement elements around those kinds of roads. But there are people from the federation here today, and perhaps they might talk to their local club wardens to maybe not be so confrontational with your members on your land.

1520

**Mr DeGroot:** Through you, Mr Chairman. I hear the existence of the wording of this amendment and it speaks of regulations. That gives me some comfort that at least it's being looked at. I guess the next step is—and maybe that question is premature and doesn't belong at this committee—how would that work out? How would that affect us? That's why I'm here. What would that look like to us? Would we get to carry around another type of identifying card or something like that?

**Mr Spina:** This is what we're working on, to try to figure out a methodology by which exempted riders would be able to easily be identified for enforcement purposes.

**Mr DeGroot:** All right.

**Mr Gerretsen:** An excellent presentation, Mr DeGroot. I think your situation has pointed out that it's nice to talk in generalities—and let it be said that the snowmobile clubs need the money. No question about it.

**Mr DeGroot:** No question.

**Mr Gerretsen:** The warden system has worked well over the years. Snowmobiling itself is a great boost for tourism in Ontario. The billion dollars it produces is just fabulous, and it's something we need more of. However, I get very worried when I hear, "Well, we'll work out all the problems by regulation." The problem with regulations is that they are not subject to public debate. They're basically just signed in a minister's office and then approved by cabinet. Quite often, nobody outside of the government ministry itself knows what the regulations are going to be until they get published, and I'm very leery of that.

The other thing it has pointed out is that there has to be almost like a final arbiter where there is going to be a

dispute locally about who are the traditional users in that area. So far we've heard some general wording about, yes, they could be people who use it for angling, hunters, other traditional users etc. I'm sure in individual cases like what happened to you there's going to be a dispute at the local level as to who is a traditional user and who isn't and how that's going to be sorted out. I would think that at that point in time there needs to be some mechanism in the bill about who is going to be the final arbiter. It can't be the ministry that in effect sets up this act. It can't be the wardens either, and it can't be the traditional users. There has to be some sort of mechanism. That's why I appreciated your presentation, because, if nothing else, it shows there's a need for a mechanism whereby disputes of the nature that you're talking about can be worked out successfully and without confrontation.

**The Acting Chair:** I think we've used up the time. Mr DeGroot, I appreciate your presentation.

#### HALIBURTON COUNTY SNOWMOBILE ASSOCIATION

**The Acting Chair:** We will call now on the Haliburton snowmobile club. Again, you have 20 minutes, and would you please identify yourselves.

**Mr Peter Overington:** Thank you, Mr Chairman. My name is Peter Overington. I represent the 3,300 members of the Haliburton County Snowmobile Association. We support the concept of a mandatory OFSC permit. We thank you for the opportunity to appear before you, and we truly appreciate the interest and support shown by you. Our club has been in operation for over 30 years. I am a past president and retired from business about eight years ago, mainly so that I could devote more volunteer time to snowmobiling at the international, national, provincial, regional and club levels.

I'd like to give you a little background. Involved volunteers direct the sport. We are not armchair administrators, but are avid participants who ride many thousands of kilometres every season. We know how to build a trail. We know how to maintain expensive and complicated grooming equipment. We understand what the average member wants and expects, and that is good trails. The volume of legal requirements and administrative complexity of operating a club of our size, along with complicated and difficult-to-repair grooming equipment, have all combined to force us to make limited use of paid staff. However, it remains our basic operating policy that volunteers direct the club. We make the decisions. We do the planning. We do the organizing. We lead our staff and fellow volunteers.

We are an important part of the community, paying our business taxes, serving on our local tours and trails committee, as well as other community committees. Snowmobiling raises millions of dollars for charities such as the Easter Seal Society and the Juvenile Diabetes Foundation. Our local trail systems provide an opportunity for shoulder-season businesses to enhance their



operations. Our portion of the trans-provincial trail system provides a safe, reliable route for those who enjoy long-distance touring.

We are proud members of the Ontario Federation of Snowmobile Clubs, which is the supportive and coordinating body for our sport. Our 281 provincial snowmobile clubs direct the federation and, while a paid professional staff operates it, we, the volunteers, make policy and develop strategy for future development. We, the club volunteers, are solely responsible for securing, preparing, opening and maintaining these snow highways for the use of OFSC permit holders.

All trails today are under close scrutiny by other potential trail users. We are working with other groups, such as the Haliburton County Tours and Trails Network, to enable them to share in the work we have done. However, the common problem remains that they do not have any form of user-pay system or enforcement system. We, the local clubs, take great pride in our ability to provide good, smooth and safe trails. One of the fundamental vehicles for this self-determination is the OFSC trail permit and the allocation of permit revenues.

So what's the problem? While improved conditions have resulted in increased traffic, which has in turn demanded increased care and attention to the trails, user-pay revenue only covers about 50% of actual costs. The rest is made up of donations of time, money, labour, expertise, resources and fundraising. The volunteer time commitment has become so large that most people who have jobs cannot commit enough time. Thus, a large part of the volunteer core is made up of retirees. Our volunteer burnout time is high, but we have proven over the years that, given the resources, we can manage our operations economically, effectively and efficiently.

Governments, tourism organizations and tour operators have been quick to identify opportunity. Snow trails are not like paved roads with an ability to carry hundreds of vehicles an hour, hour after hour. They are delicate surfaces which need renewing almost daily, but certainly after approximately 100 vehicles.

The OFSC has attempted to equalize funding, but SNOTRAC and SST1 and SST2 caused snowmobiling to use matching operational dollars. In the past three years, we, the Haliburton County Snowmobile Association, have spent \$350,000 on capital investment in order to maintain current our fleet of seven groomers. We have spent over \$40,000 in three years bridging, both on crown and private land, for the benefit of all-season trail users. This year alone we have ordered three new steel bridges, and in three years we have spent over \$100,000 on bulldozing trails which 10 years ago were OK, but by today's requirements are substandard. Even as a large club—in fact, the largest in the world—we have had to use operational dollars for capital expenditures.

In addition, the tourism sector has done an excellent job of attracting an influx of riders who have demanded nothing but the best. We have been hard pressed to meet their demands. We need a system which will require trail users to pay their fair share of operating costs. It must be

universal and easily enforced. We must be part of that enforcement presence, because we know our own trails better than anyone else. We ask you to recognize our accomplishments and the local autonomy which has made snowmobiling possible by adding the weight of law to our mandatory permit.

1530

It is of great concern to us that the proposed legislation may not give us the degree of control over our own destiny which we as volunteers have worked so hard to achieve. Our federation, which is a reflection of the wishes of its member clubs, must retain control over mandatory permits. We have proven that we can deliver the goods, given adequate funding and legislative support.

Ten years ago we persuaded the county of Haliburton to purchase the abandoned Kinmount-Haliburton railway line. I attended public hearings at that time, and concern was expressed over abutting landowners and traditional users. We have gone out of our way to accommodate them. At the same time, we have attempted to discourage freeloaders. But we need a mandatory system which we control. We must recognize our trappers, fishers, hunters and workers operating sleds, but casual users should pay their way. I personally am a trained club trail warden and have stopped people who tell me they are on their way to such and such a camp, only to meet them an hour later on a different trail. We need to be able to enforce OFSC mandatory permits.

The Haliburton County Snowmobile Association greatly appreciates your attention to this presentation, and we urge you to consider the points we have presented to you. Snowmobiling is my vocation. As a volunteer, I do administrative work for my chosen sport 12 months of the year. I cannot begin to calculate my worth and that of my 32 fellow directors to tourism in Ontario. I have groomed trails, organized events, cut brush, erected signs, written policies and procedures, staked lakes, attended hundreds of meetings and carried out trail patrol. But I am not that much different from hundreds of volunteers on whom our sport is built. However, it is extremely unlikely that I will continue this involvement if government control invades our sport.

We need a new source of sustainable funding, and we the users are prepared to pay for it. But we must retain control. We must be the final authority on all aspects of the mandatory permit. The OFSC mandatory permit must be absolute, or almost, and be enforceable and enforced.

Traditional users on crown land must be recognized. We support the concept of an act to support trail sustainability and enhanced safety and enforcement, but we urge you not to kill the golden goose by making its offspring a ward of government.

**The Acting Chair:** Thank you very much, Mr Overington. We have about two minutes per caucus, starting with the government.

**Mr O'Toole:** Thank you very much, Mr Overington—a very impassioned plea for the autonomy of the federation. I've heard that repeatedly and I totally agree



with your sentiment that volunteers will disappear if the government takes over, the golden goose thing.

I think you may want to comment on the volunteer component and permit fees. There's a balance there. If I pay \$100, maybe I still volunteer. If I pay \$150, maybe I'm liable to say, "I'm paying my share."

The other part is the enforcement provisions. Do you think there's strong enough language in the proposed legislation to allow you to enforce the job? If the government does make it a law, what does it mean to you as a warden?

**Mr Overington:** Basically, we need the power to enforce the legislation. We have STOP officers now, as opposed to wardens. If this becomes legislation, I see the power possibly being given to STOP officers, with certain powers to the wardens. I realize there is a problem as far as enforcement is concerned, in that it traditionally has belonged to law-enforcement people, and STOP officers, as sworn law-enforcement people, are entitled to ask for documentation etc, which we do not. We have only been able to ask for our own permit. So I do see a problem there. But we do need a vehicle, whatever that is, to ensure—and I don't believe the OPP is in a position in Ontario to provide the sort of monitoring over trails that we provide. Really, that's the only thing I can say. Whatever that vehicle is, we do need something to make sure the permit is purchased.

I see one answer to this whole problem being the provision of land use permits on crown land. That's one of our problems right now. We can only enforce our own permit on the private lands over which we have jurisdiction. If we had land use permits on crown land, that would open up a whole new situation, but unfortunately we can't get those. I still think there is a way of working with the traditional users. We have done it in Haliburton county, we have done it with fishers, we have done it with hunters, we've done it with other people, and I believe it can be worked out. Maybe we need to formalize that approach, but it can be done.

**Mr Levac:** Thank you very much for your presentation, Mr Overington, and obviously the passion and enjoyment you bring to us from your sport.

Your reference to the permit situation is basically saying that Bill 101 is headed in the right direction with mandatory permits. Is that fair to say?

**Mr Overington:** Yes, sir, that is fair to say.

**Mr Levac:** The second part to that, though, is also an implication that if anything short of simply putting the permit into law and then giving the rest of the responsibility to the OFSC is not done, you would be hesitant to support 101?

**Mr Overington:** Yes, that is correct. I would, because I believe the OFSC must retain control. We are the clubs; we control the OFSC. The OFSC must have the right to decide on the disposition of the funding from the permits and the design and all the other things the OFSC has traditionally done.

**Mr Levac:** Finally, with that said, it sounds to me like, ballpark, 50% of the money that's necessary comes

from the fees, the other 50% to be raised in secondary funding. Do you believe the government should play a role in that area as well?

**Mr Overington:** I do, sir. I believe the government should. As was said before, I've dealt with groups from the United States, and funding has been made available through some of the taxes that other people have pointed out here, which have been paid by snowmobiling, been returned to snowmobiling and have enabled snowmobiling to be sort of self-sufficient.

The problem we're running into, particularly in a large club like my own, as I said, is that we're having to use paid staff. That's one of my other concerns in the bill. There is some consideration that maybe the money would not be available to use in wages. As we get bigger, as things get more complicated, we cannot operate clubs with 3,300 members with volunteers. It has become just too much of a problem. We need professional people to look after our equipment and we need professional people to do our administration. Those are the two points I would make there.

**The Acting Chair:** Thank you for your presentation, Mr Overington.

1540

#### OLD HASTINGS SNOW RIDERS SNOWMOBILE CLUB

**The Acting Chair:** We will call on the Old Hastings Snow Riders, Mr Hadley.

**Mr Ron Hadley:** Mr Chairman, members, I'm Ron Hadley, from Bancroft, presently trail chairman of the Old Hastings Snow Riders Snowmobile Club. This club has approximately 1,200 members and I am here to represent them today.

Just a short history of our club: it was formed in 1982-83 and has operated in the area from Bancroft in the north to Millbridge in the south. We cover the complete width of Hastings county in that area.

For the 18 years the club has been in operation, it has done this with volunteers. These volunteers carry out the majority of work on the trails, such as brushing, grooming, bridging and signing. In addition, a network of people and businesses sell the 1,200 permits to our members on our behalf. I would like to emphasize that these people sell the permits for us without any payment or fee. I must also emphasize the club executive is not in favour of paying any person, business or organization a fee for selling permits on our behalf or allowing anyone to retain a portion of the permit fee for the sale of the permit. Our feelings are that if one person gets a fee for providing a service, then everyone who at present provides volunteer labour and services free would also expect a fee for their time and efforts. We all know that if everyone providing volunteer services were to receive payment, then permit prices would have to be raised to a much higher level than at present in order to build, groom and maintain our trails to today's high standards.



Permit sales locations: if permits are not sold by the Ontario Federation of Snowmobile Clubs to member clubs, who in turn sell direct to our members, the purchasers would not have proper access to permits. For example, the Ministry of Transportation licence bureau hours of operation—this is in Bancroft—are Monday to Friday, 9 am to 5 pm, but closed from 1:45 pm to 3 pm each day. You can see that a snowmobiler from New York state arriving here on Friday evening would not be happy waiting until Monday morning to purchase a permit. In fact, he is very liable to either ride without a permit or return home and be unlikely to return in the future. At present, permits are available on a 24-hour, seven-day-a-week basis if necessary. No one would go without.

Also, I read in there about driver training. At present I am also a driver trainer and feel that the OFSC is far better set up to teach children on the subject of proper and safe snowmobiling than some person the ministry may give this authority to. At present, people are experiencing long waits in obtaining driver's licences, so I feel the present system should be left as it is.

Thoughts on Bill 101: I have read this bill many times and the part that scares me is the words "minister or any person authorized by the minister." This bill gives the minister the power to charge fees and authorizes people to make changes.

I have been a member of the Old Hastings Snowmobile Club for the past 18 years and worked with all the other volunteers who have worked hard as well to make snowmobiling what it is today. This has been done through making changes that were well-thought-out and then, with the consent of the majority of the club membership, making the changes. The same holds true for the OFSC, which is made up of dedicated snowmobilers who make the necessary adjustments with the approval of the member clubs. I personally do not like to see a system come into being that allows one person to make changes at the drop of a hat that could affect the future of organized snowmobiling.

I feel that to have good trails in Ontario we must make permits mandatory for—and I'll emphasize—recreational snowmobiling, thereby providing a larger income to assist in the maintenance of trails and keeping the cost of individual permits lower to help promote the activity.

A word on enforcement: if we are to have a mandatory permit system, then we must also have enforcement by police and STOP officers, not only to see that trail users have necessary permits, but other aspects of the provincial statutes and federal laws also. Leniency in enforcement is not always the best policy. The appropriate laying of charges assists in a much safer trail system.

Although this thought is not pertaining to Bill 101, I feel that the present registration of snowmobiles we have in Ontario divides the province. The fee should be the same regardless of where you live.

In summation, Bill 101, An Act to promote snowmobile trail sustainability and enhance safety and enforcement, is basically a good bill. All that is needed are

a few word changes. However, I feel that the selling of permits and the conducting of driver training courses are best left with the Ontario Federation of Snowmobile Clubs.

I would like to thank the standing committee for allowing me time to express my views and the views of the Old Hastings Snow Riders on Bill 101.

Also, there was an endorsement handed out by the Eastern Ontario Trails Alliance. They are tied up with this water deal, going to Ottawa, and are there, but I was asked to present this page regarding the Eastern Ontario Trails Alliance.

My thought, basically, is that when I read Bill 101, I see the word "fee." There's no mention of the fee.

Those are my concerns.

**The Acting Chair:** Thank you, Mr Hadley. We have about three and a half minutes per caucus. I believe this time we start with the Liberal caucus.

**Mr Gerretsen:** Thank you very much, Mr Hadley, for an excellent presentation. We share some of your concerns as well, particularly with the regulatory power that the minister has here, because we believe that, unfortunately, the regulations that may be passed under the bill will not be subject to the kind of public scrutiny that we currently have.

We've heard from earlier presenters here today that they have about 95% compliance within their own areas of recreational snowmobilers. Do you have the same kind of experience in Hastings as well?

**Mr Hadley:** With trail permits?

**Mr Gerretsen:** Yes.

**Mr Hadley:** Yes. We have very few people snowmobiling.

**Mr Gerretsen:** You have very few people snowmobiling who don't have permits?

**Mr Hadley:** Yes, the reason being in our area we have 60 kilometres on the Hastings Heritage Trail which is owned by the province and the county. That was taken over about eight years ago and one of the mandates was that the province and the county, at that time, had put up signs that say that you must have an OFSC trail permit. So the police have always regulated that being a recreational trail.

**Mr Gerretsen:** How many wardens would you have within your system who may be on duty on any given day?

**Mr Hadley:** We have a total of 16 in our 1,200 members, and we have four to five pretty well all the time. Pretty well all of our trail wardens are groomer operators as well.

**Mr Gerretsen:** Could you tell me something about these grooming machines? What's the cost of these machines?

**Mr Hadley:** The one we purchased last years is a New Holland with an AMFI drag, and it was \$122,000 plus taxes. We have four large groomers and we have four snowmobiles that we maintain, to put up signs and stuff like that.



**Mr Gerretsen:** How many kilometres of trail do you have?

**Mr Hadley:** We have over 400 kilometres of trail. Two years ago we had just about 1,350 members. This past year, with the winter, we were down about 100 members.

**Mr Bisson:** You are basically echoing what I think we've heard from a lot of people, specifically in regard to the section that gives the minister the power to set the fees or establish the permitting process. But as I understand it, that's only because of the way the legislation was drafted. You have to do it by way of the minister, but I'm sure we're going to take a look, as a committee, at finding some way of writing it up so that this government or future governments for whatever reason don't decide, "We want to take 5% off the top," or, "We want to have our say in it." I don't think that's the intention of it right now, but we need to figure out some way to safeguard it.

Also, on your issue of MTO licence bureaus, I couldn't agree with you more. If you live in Hearst you'd have to wait for once every three weeks for half a day on Wednesday, so I don't think that works very well. I want to say I agree with your frustration and I think the clubs have done a good job. What we have to do is try to figure out ways to support the club.

My question is not so much for you but to the parliamentary assistant: are we going to have clause-by-clause after this particular committee? Have you or the House leader given any thought to allowing an opportunity for the committee to sit down to carry on the business of how we want to deal with this bill and whatever recommendations by way of amendments we want to bring?

1550

**Mr Spina:** It was our intention, because this is really kind of groundbreaking where we're having public hearings after first reading without debate in the Legislature, as usually takes place after second reading, that we would have clause-by-clause with amendments—

**Mr Bisson:** Before we go to second reading.

**Mr Spina:** Before we go to second reading, yes.

**Mr Bisson:** So that's the intent.

**Mr Spina:** That's why these hearings are far more open than they usually are.

**Mr Bisson:** Just so that you understand what we're talking about in real English, it's an opportunity for us on the opposition side, along with government members, to actually make some of the amendments you suggest. We need to have that clause-by-clause, and I hear the parliamentary assistant say yes.

**Mr Hadley:** I did take a picture at the Bancroft office, if anybody doubts my timing that I've mentioned.

**Mr Gerretsen:** Have they got late lunch hours in Bancroft or something?

**Mr Hadley:** I can pass that around.

**Mr Bisson:** You couldn't even take a picture of the one in Hearst.

**The Acting Chair:** You'll go by snowmobile to get it.

**Mr Bisson:** They take the fine with them.

**Mr Spina:** Thank you, Mr Hadley, for your presentation. I had a question and it ties in a bit with the previous presentation. I think Haliburton has around 3,300 members. I think that's what Mr Overington said. You have about 1,200?

**Mr Hadley:** Yes, we do.

**Mr Spina:** Are you the recipient of any funding from the federation under the matrix, the redistribution of funds program?

**Mr Hadley:** Yes, and we have applied, with the OFSC, for grants on our equipment. We received money last year on the new unit that we purchased. We received money this year for a new bridge in Bancroft. I'm not sure how long the bridge is; it's in excess of 100 feet, I believe. I don't know how much it is in total cost. I know it's between \$150,000 and \$200,000. We applied in the spring and we did get \$15,000 in order to help put that bridge across. In Bancroft, this heritage trail runs from Glen Ross to Lake St Peter, and that is owned by the province and the county, as I've said. That runs right through Bancroft, but it runs on the west side of the town and all of the town functions are east of that. Of course, the York River runs through, so there was no access over there. This has been a project that's been going on for several years and this year, between the millennium fund and different organizations, we hope it's a reality. We are right now just waiting for permits. The bridge is all there and we're just waiting for fisheries and oceans to start the work. We've waited for a year.

**Mr Spina:** Those fed guys, you mean?

**Mr Hadley:** Yes. We have waited as long—

**Mr Bisson:** They have worse hours than MTO.

**Mr Hadley:** Putting a bridge across, we have waited two and a half years for permits.

**Mr Spina:** Just to clarify what I was getting at, where does your club sit in terms of size compared to other clubs? Would it be one of the smaller ones, one of the bigger ones or somewhere in the middle?

**Mr Hadley:** I would think we're one of the larger ones. We aren't anywhere near Haliburton county's. That's a whole set-up. But Paudash is to the west of us and they have 2,200 members. Where we sit, there are five clubs using our trails, joining on to our trails. Like I say, the club to the west is 2,200; the one to the east is 600; the one to the north, which is Maple Leaf, is 600.

**Mr Spina:** I'm sorry, if I may interrupt. There's this matrix that the federation has and they take from their share of the permit fees and in turn apply a point rating system per club or by district?

**Mr Hadley:** That's correct, by club, depending on the number of kilometres of trail, the number of members and the pressure of the snowmobiling from outside our own area.

**Mr Spina:** Does this money come for only capital projects or does it help operations as well?

**Mr Hadley:** The matrix money?

**Mr Spina:** Yes.

**Mr Hadley:** We have to use it—



**Mr Spina:** You can apply for both?

**Mr Hadley:** No. When we have a major investment, we apply through another fund. But our matrix money we use to maintain the trails, to build trails and one thing and another.

**Mr Spina:** So that's operations.

**Mr Hadley:** Yes.

**Mr Spina:** The other fund is a capital fund, is what you're saying.

**Mr Hadley:** Yes, that's right.

**The Acting Chair:** Thank you, Mr Hadley. We appreciate your presentation.

#### ONTARIO FUR MANAGERS FEDERATION

**The Acting Chair:** We call on the Ontario Fur Managers Federation. Again, you have 20 minutes. Would you identify yourselves, gentlemen, please.

**Mr Laurie Whyte:** Good afternoon, ladies and gentlemen. I'm Laurie Whyte, president of the Ontario Fur Managers Federation. We hope to leave a little time to answer any questions you may have. I'll turn the presentation over to our general manager, Mr Howard Noseworthy.

**Mr Howard Noseworthy:** My name is Howard Noseworthy, general manager of the Ontario Fur Managers Federation, headquartered in Sault Ste Marie.

The Ontario Fur Managers Federation represents all non-native trappers in Ontario and those native trappers who choose to be federation members. Current membership in the federation is 5,000. The federation has been in a new business relationship agreement with the province since June 1997. Under this formal agreement, the federation licenses non-native trappers and those native trappers who choose to obtain their licenses through the federation. We also input all mandatory harvest data from the trappers we license and have been charged by the province with responsibility for the mandatory trapper education program. We print and distribute the summary of fur management regulations to all trappers and MNR offices via our magazine, which goes to all Ontario trappers, whether they are members or not, and to all MNR district offices. In short, under agreement with the province, the federation conducts and is responsible for most of the services to Ontario's trappers.

Obviously, all of this has to be funded, and given the way the government of the day operates, it is no surprise that in putting the NBR for fur management together, federation and MNR negotiators were advised by government that the fur management program was expected to pay its own way, which I might say it did in its first year of operation.

In 1997, the trapping license fee increased by 400%, from \$7.49 to \$37.45. Trappers who harvest more than one area pay additional license fees. At the same time, the royalty paid to government by trappers on the gross value of all wild fur harvested also increased by 10%, from 5% to 5.5% of gross, or \$55 per \$1,000 worth of fur harvested. All new trappers must successfully complete,

and pay for, a mandatory fur harvest, fur management and conservation course prior to licensing. Trappers also pay increased fees for hunting licenses and have recently been saddled by the federal government with fees for licensing and registration of all firearms, increased fees for handgun permits and course costs related to new boating regulations. In addition, they pay taxes on the equipment they use on their traplines, including snowmobiles and ATVs, and on the fuel that they use. Trappers also pay membership fees to their local trappers' councils and to the Ontario Fur Managers Federation. Incidentally, all OFMF members carry \$2 million in third party liability insurance covering their trapping activities.

Trappers already pay their fair share for access to the resource they harvest. Some pay hundreds of dollars. The issue of access to the resource is at the heart of our federation's concern with Bill 101. The wild furbearer resource is one which occurs across Ontario's land mass, and despite trapping licenses which grant the privilege to harvest this resource, without access to the land, a license is just a piece of paper.

Trappers have always constructed trails in the bush to access their traplines. The routes of many current snowmobile trails follow original and current trapper trails. Some of these trails have been in existence for decades. The routes of many other snowmobile trails follow what have been traditional public access routes. Again, some of these trails have been in existence for decades, and the public, trappers included, have used these trails to access a land-based resource—in our case, wild fur-bearers. Snowmobile clubs may have commandeered some trappers' trails and public access routes as the most convenient and logical routes for their recreational trails, but for trappers it's hard to consider these improvements as an improvement.

#### 1600

In fact, generally, trappers do not derive a benefit from groomed snowmobile trails through their traplines. The increase in snowmobile traffic due to groomed trails often, perhaps usually, acts to the detriment of trappers; for example, increased noise and disturbance of furbearers and game, occasional increased vandalism and theft and sometimes increased conflict.

Because access to traplines is critical to trappers and because the snowmobile trail system often encompasses, in whole or in part, the trails that trappers have originally created or traditionally used, trappers have traditionally maintained these trails in any case, including such things as removal of fallen trees and removal of problem beaver that may be causing flooding of trails. They continue to do so for their own needs, with the net effect that all users are beneficiaries.

The normal day-to-day harvesting activities of trappers automatically benefit all trail users, especially where removal of beaver that are causing flooding or erosion of trails is concerned. Trappers can also be called upon during the off-season to remove problem beaver. Without access to crown land trappers do not have access to the



resource they harvest, even though they have paid for access to this resource via their licence fees and royalties.

Public land is a finite resource. As such, there are a variety of users of the land and a variety of demands on the land. Trappers, via their federation, have consistently supported co-operative and shared use of crown land. They do not expect recreational snowmobilers to pay for their fur harvesting activities, nor do they expect to pay for the activities of recreational snowmobilers.

Our federation has offered to work co-operatively with the Ontario Federation of Snowmobile Clubs on a means to identify trappers who are accessing their traplines. We wrote to Mr Bert Grant on October 7, 1999, and to Mr Tim West on July 6 of this year. Copies of these letters are attached to the material you have. To date, OFSC has not taken our federation up on this offer.

Our federation has offered to work co-operatively with OFSC to develop a framework in which trappers can assist in alleviating problem animal situations on snowmobile trails, which in effect would be an ancillary benefit to all trail users. Again, OFSC to this point in time has not taken our federation up on this offer.

Trappers operating on private land already have the permission of the landowner to do so. Landowners are unlikely to look favourably on anyone impeding the privilege of passage on their land that they have granted, especially interfering with a trapper who is dealing with a problem animal complaint at the landowner's request. In some cases, trappers and/or local trappers' councils have formal agreements with municipalities to handle problem fur-bearer complaints within municipal boundaries. As an example, the city of Sudbury and the Sudbury Trappers Council are in just such an arrangement. Under contract, the trappers of Sudbury handle problem animal complaints in Sudbury on municipal land with municipal permission. Municipalities also are unlikely to look favourably on any attempt to interfere with these operations.

Trappers operate small businesses with marginal bottom lines. Additional fees, especially those that do not in any way improve their operations or augment their bottom lines, can only act as a deterrent to continued operation of their small businesses.

To summarize, Ontario's trappers, through the Ontario Fur Managers Federation, are in a formal business relationship with the government of Ontario, the new business relationship for fur management in Ontario. Trappers have absorbed increased licence fees and increased royalties for access to the wild fur resource. They have maintained trails on their traplines, many of which routes have recently been commandeered by snowmobile clubs as recreational trails. Trappers do not derive a benefit from these recreational trails. Trappers already pay their fair share for access to the wild fur-bearer resource. Crown land is a public resource shared by many users. Trappers should not be expected to subsidize the recreational activities of snowmobilers. Trappers should be exempted from fees to travel snowmobile trails when

accessing or harvesting their traplines. Bill 101 should specifically exempt trappers from snowmobile trail fees.

While Ontario has thousands of trappers, they are each restricted to specific areas in which they can operate. They are also spread across this great landscape, the net result being that an exemption will not amount to a great loss of revenue to the trail system in any one area of the province. Additionally, you should consider that not all trappers own or use snowmobiles, nor do all of them live in areas where they can or need to access OFSC trails.

The Ontario Fur Managers Federation is willing to assist in developing a process to devise a mechanism to identify trappers who can legitimately travel snowmobile trails without the imposition of fees. This need not be a cumbersome process. As I said, trappers are restricted to specific areas. Trapping licences already have printed on them the areas that trappers are restricted to while conducting their trapping activities. For registered traplines, the trapper is restricted to the trapline and immediately adjacent private land. For resident trapping areas, trappers are normally restricted to a single MNR district, or perhaps just a portion thereof, and only on lands for which they have written permission. If the committee believes it advisable, in addition to trapping licences, the federation is willing to produce and distribute to licensed trappers a readily identifiable sticker that can be prominently affixed to the trapper's snowmobile.

To conclude, Ontario's trappers require an exemption from snowmobile trail fees while travelling to, from or on their traplines, including private land on which they have the landowner's written authorization to trap. We believe Bill 101 should be amended to include this exemption. The Ontario Fur Managers Federation is willing to work co-operatively with the committee or relevant government ministries in developing an appropriate mechanism for exemption and identification. With this done, Ontario's trappers can support recreational user fees for those who use snowmobile trails for purely recreational purposes.

We wish to thank the committee on behalf of our federation for the opportunity to appear before you today. Mr Whyte and I would be willing to attempt to answer any questions you may have.

**The Acting Chair:** Thank you very much, Mr Noseworthy. We have about three and a half minutes per caucus, starting with Mr Bisson.

**Mr Bisson:** Thank you. I wasn't expecting to be first this time. When you're the third party it doesn't happen very often.

**Mr Spina:** Every third time.

**Mr Bisson:** Je me souviens, as they say.

I want to say first of all, I hear what you're saying. It has come loud and clear in these hearings from a number of people who have presented on behalf of trappers. I'm a little bit dismayed that you weren't responded to by the snowmobile federation, but I'm sure something could be worked out that way.

I think there is already agreement here to try to find a solution to this. You've given a good suggestion with



regard to the licence that you have to trap which specifically spells out where you can do so. I'm sure we can put something together that makes some sense and makes it work.

The only question I have for you is this: in light of not getting the response from the snowmobile federation, I take it you are saying it's not good enough to write the legislation to give the federation the ability to do so. What you're basically telling us here is you want to see it in the legislation?

**Mr Whyte:** That would be correct. We want to see it in legislation, that trappers are exempt.

**Mr Bisson:** I have no other questions. I have to be back in my riding for 8 o'clock, which is going to be kind of pushing it, so I can't stay for the end of the hearings. I want the presenters to know I will be going through the rest of the presentations, and I'm sure Joe will do some good work in trying to put something together.

**The Acting Chair:** Thank you, Mr Bisson. Now to the government caucus.

**Mr Barrett:** It's a very interesting presentation. You make mention of noise and disturbance of fur-bearers and other game. I think of the phenomenal growth over the years of recreational snowmobiling in the bush across the province. What kind of evidence would you have from your members, or what kind of impact is this having on not only what you're trapping but other game as well? I would think it would be significant. Have you had to move from the areas where you've traditionally trapped?

**Mr Noseworthy:** I don't want to overplay the importance of that. However, I would say that many of our members at this point in time would shy away from setting their traps immediately next to groomed snowmobile trails. That's for a variety of reasons, one of which is, they might normally expect to find less game of certain types there. There would be some animals, we believe, that would not be very disturbed by snowmobiles, any more than they would be by road traffic. However, when you take animals such as lynx, which are normally very shy of human beings in any case, then perhaps those animals would more readily shy away from the trail system.

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**Mr Barrett:** Have there been any studies on this, any impact?

**Mr Noseworthy:** There have been no studies that I am aware of. These are general observations from trappers.

**Mr Barrett:** And you're out there; you know what's going on.

**Mr Noseworthy:** Our people are across the landscape, yes.

**Mr Spina:** Thanks, gentlemen. I appreciate your making the trek down here from my home town, Sault Ste Marie. Good to see you again, actually.

I want to compliment your organization for the way you have gotten your district people and your local people to come to each of the various hearing venues we had. I personally commend you for making a presentation

directly here on the last day, on behalf of the entire council.

We appreciate your words. I guess the best message that we got from you—and tell me if I'm off base here—is that you would like to see the exemptive structure in the bill, as opposed to in regulations.

**Mr Noseworthy:** That is correct. The way I read the legislation, at least currently—it simply says, "A regulation made under any provision of this act may create different classes of persons and motorized snow vehicles and may apply differently to each class created." There's certainly no guarantee in that wording that it will be so. It simply seems to point out the possibility and permissibility of this happening.

**Mr Spina:** I will say that, even though you may not have had a response from the federation, we have had some preliminary discussions among the various ministries as to how a permit would be implemented and how the exemptions would be easily identified and certainly enforceable. The idea of a different permit sticker was actively discussed. I'm extremely pleased that you made a suggestion that perhaps your organization be the conduit for the distribution of your exempted permits if we get to that stage. So we'd be very interested in talking to you at some point, sir.

**Mr Levac:** Mr Noseworthy, thank you very much for your presentation. I appreciate it, and thanks for bringing the educational part to it, because that's important as well.

You indicated that you have discussions, and trappers, for their part, went to private property owners and made their own personal arrangements to possibly and most likely get rid of some trouble fur-bearers, and other reasons, I assume—that they just make them. Earlier, I asked a question of another member regarding signing some kind of agreement with the trail users, and that it was usually done exclusively, meaning that only the people with permits and only the people who are using those trails would have permission to go on those private properties. Do the trappers perform the same type of thing, where they get a personal exclusivity thing, so that only the trapper can only go on his or her property?

**Mr Whyte:** Yes. Under current regulations, all licensed trappers who are harvesting fur on private land must have the written permission of the landowner for trespass access rights. So they're already granted permission to be there, whether they may cross in part or in whole the snowmobile trail, should there be one through that property, but they do have the right to access and trap.

**Mr Levac:** Again, that would point to the discussion you want to have with all the groups to ensure that when those discussions take place between the property owner, the snowmobile club and the trappers, all three come to an agreement, because then you'd have to know who has access to the land on private property, and that's not to speak of the crown lands. I hope I'm clarifying that. It sounds a little convoluted, but it's OK up here.



**Mr Whyte:** Even the crown lands are assigned to individual trappers via registered traplines or crown land blocks. Only one trapper would be harvesting—

**Mr Levac:** But it doesn't necessarily mean it's mutually exclusive between the snowmobilers and the trappers.

**Mr Whyte:** No.

**Mr Levac:** The last quick one, if it's OK, Chair—I know Mr Gerretsen happens to have a quick one—and that is regarding the use of snowmobiles for trapping. Am I to assume that in the vast majority of cases the trappers are using snowmobiles? I got a sense that the snowmobilers are concerned with any non-snowmobile use on their trails because of the destruction it causes to the trails.

**Mr Whyte:** In early fall the trappers are probably using ATVs or quads, but traditionally, once the snow comes and you have enough snow and ice conditions to travel your trapline, the snowmobile is probably the number one machine. We've been using them since they first came on the market. Trappers were quick to take advantage of them and built trails for their use. They're not using big machines; they're using small machines.

**Mr Levac:** Thanks for the clarification.

**Mr Gerretsen:** I have one question: The licensing fee and the royalties you pay are to the provincial government, are they not, or are they to the federal government? Who are they to?

**Mr Noseworthy:** The licensing fees and the royalties are to the provincial government. But I want to make it clear that a portion of the licensing fee is what helps to support this new business relationship for fur management in Ontario. So a portion of that fee does find its way back to the federation.

**Mr Gerretsen:** I'm very pleased to hear that, because we always hear from the government that they don't believe in increased taxation. We always look at a licensing fee or a royalty fee increase as taxation. There have been some increases in them, and we just wanted to get the record straight.

**The Acting Chair:** Thank you, gentlemen, for your presentation. We appreciate it very much.

**Mr O'Toole:** Mr Chair, a point of order: I didn't get to ask a question, but in our briefing notes that were supplied by staff, it says that between 1993 and 2000, the number of licensed trappers has gone from 11,000 to 8,000. Their fee, as we've heard, is about \$37. I just wondered if there's a requirement for them to show some revenue or pay some royalty. I guess that's the question I'd ask research. I could pay \$37.50, become a licensed trapper, be exempted in the act and theoretically not have to produce one pelt and not have to pay any fees for snowmobiling.

**Mr Levac:** Mr Chair, I believe Mr Noseworthy did have a comment to clarify, if we can get that immediately. I think it's important. I agree with Mr O'Toole saying there could be some games that get played.

**The Acting Chair:** Mr Noseworthy, you can answer that.

**Mr Noseworthy:** At this point in time, prior to obtaining the ability to get a trapping licence, a person must first complete a fur harvest, fur management and conservation course. That's a minimum 40-hour course, the average price of which in the province is probably running right around \$150 and can be as much as \$250. Once the person has completed that course, they are not guaranteed a licence. In order to get a licence on a registered trapline, they must first have a vacancy available on a registered trapline or a registered trapper who is willing to take them on as a helper. In that case, most registered traplines have fur-bearer quotas assigned to them. Under legislation, trappers must harvest 75% of their beaver quota or stand to lose that trapline.

Even on private land with resident trapping licences, successfully completing the course does not guarantee a licence. The prospective trapper then has to obtain landowner permission to trap on his land. While some landowners very freely grant that, most of them perhaps expect to derive a benefit from that, as well, in terms of control of beaver in particular on their private property.

So, number one, trappers have to jump through several hoops before they get a licence and, number two, there are some requirements on them, under the registered or resident trapping areas, to perform afterwards. I don't think you should have an expectation of large numbers of people trying to use a trapping licence as a means to circumvent a snowmobile trail fee.

**The Acting Chair:** Thank you for the clarification.

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## MARK COMMODORE

**The Acting Chair:** We'll call on Mark Commodore, please. Mr Commodore, you have 10 minutes, by presentation and/or questions.

**Mr Mark Commodore:** Good afternoon, ladies and gentlemen. I want to thank Viktor for allowing me to get in. I didn't know anything about it. I was up on holidays when I found out about it.

Allow me to introduce myself. My name is Mark Commodore, owner-operator of Northern Invasion Ride Snowmobile Tours. I've been in business for five years and have 30 years of sledding experience, tracking an average of 4,500 miles per year.

My concerns with the new act are as follows:

(1) Leave the OFSC to collect and set fees, as they have in the past with 30 years' experience. There's too much to factor in. For example, northern Ontario people think they don't have to buy a permit because before Sno-TRAC they ran that forest access trail for free. Southern Ontario sledders say, "There were only about three weekends—lack of snow. It's too expensive." It is an organization, which its members vote on, with 30 years' experience. The government has none, as I have stated.

There are two ways to make money: raise the price of something or lower your costs. We know the government doesn't do the latter.



(2) Bring back the seven-day pass. Whoever decided to drop it was not a business person and doesn't live in northern Ontario. Americans will continue to spend their money in Quebec and ride Quebec trails. The permit was an easy \$75 for the clubs.

(3) Sled renters have a tough enough time with insurance rates. Don't hurt them any more by charging them with trespassing when the driver of the sled is the one who should be charged. This is a market that introduces a person to sledding with a snowball effect of tax dollars, an avenue Ontario has not yet ventured to go down to its fullest.

(4) Tell me what the advantage will be by turning this over to the government. What improvement is this going to make? How can we be assured that all the monies will end up on the trails and not in another government pocket?

Remember, this organization is made up of mostly volunteers and generous landowners. How many people are going to volunteer for the government and how many landowners are going to donate to the government?

In closing, I hope the government stays a silent partner and allows the fulcrum to work. OFSC and the sledding industry continue to strive while the government keeps counting their large tax dollars, as they have in the past.

**The Acting Chair:** Thank you, sir. That leaves about three and a half minutes per caucus, and we will start with the government caucus.

**Mr O'Toole:** Thank you very much, Mark, for some very short but direct and compact observations. I'm going to just pick up on one of the comments you made, since I don't have a written presentation, which is that most often governments don't reduce when their operating costs reduce; they just put the money somewhere else. I would say certainly, without being political, that's been our whole thing, to reduce taxes to give you more money so that you can spend it to create whatever economy you can create. That's just for the record.

**Mr Gerretsen:** You're not being political, are you?

**Mr O'Toole:** It's not political. The whole "less government" theory really gives people the right, but we have to regulate behaviour to some extent for the safety and common good.

I like the idea that the federation—and I can say for the record that I do support some of the recommendations you made. It's not just a sense that less government is better government. It's a case that volunteers and people themselves, if they have the right framework and policies and guidelines, are able to modify and adjust what the needs are for the community they're trying to serve. Is that generally the thrust of what you've said? Have I summarized that—

**Mr Commodore:** The way I'm reading the act, the minister can come in and say, "Your trail permit is now going to be \$250." As a matter of fact, three weeks ago I sat and watched some MTO guys and it took them four hours to change a sign. If you've got a bunch of volunteers, it would be done in half an hour and on to the next job.

**Mr O'Toole:** That's good to have on the record too.

**Mr Commodore:** You know what I'm saying. It's that kind of thing where they—

*Interjections.*

**Mr Spina:** It would take six hours under a Liberal government.

**Mr O'Toole:** Oh, come on. Leave it alone, Joe.

**Mr Commodore:** You know where I'm going. It's the kind of thing where when the volunteers do it, it's in and out. They do it as cheaply as they can because the monies aren't there. As I said before, you get the people up north where, before Sno-TRAC, that forest access trail was their trail. Now that Sno-TRAC is there and they've put a real nice highway down it, they're up there—I know them. I talk to them. I'm up there all winter, and it's like, "I got to go down that free less than 10 years ago, and I'm not paying now." Let's face it. Northern Ontario, and some of you gentlemen are from there, the money's not real flush and they'll ride it anyway, where down south here, I'm guessing maybe 90% of our people user-pay. They peel it off and they go because that's what they want to do, ride the snowmobile trails. But when it's a three-weekend deal because of weather, a lot of which is not factored in—you listen to all these conversations and these talks; nobody factors in weather. In southern Ontario, we don't get it. With the lack of snow, you have the guy saying, "Too much money." If you've got the Minister of Finance saying, "Hey, guys, the snowmobile trail next year is going to be 250 bucks," let the voting caucus do all that voting. They've got the 30 years' experience and know what the members want.

**Mr Levac:** Thank you, Mark. If your concerns are not addressed, as we've heard in many of the presentations with regard to Bill 101 and to OFSC's ruling body taking care of the permit, could you support the bill after that?

**Mr Commodore:** Support in what way?

**Mr Levac:** In terms of saying that it's still acceptable if we aren't able to give OFSC the permit-making authority you are seeking.

**Mr Commodore:** It's gone through first reading. It goes through a bunch more readings, but when it's done, it's like God speaking. It's like my guns. I've got to turn them in eventually. You've got to register them. You've got to go where you're pushed. You're like an arrow. What I'm saying in my number (4) is, tell me the advantages of turning this over to the government. What improvement is going to be made? The big one is, how do I know those monies are going to end up on the trail and not in some other government pocket? As it is now, if I buy my permit, I know it's fed right back into the trails. I can see the trails. I know they're being looked after. I know the signing's out there.

We've got the seven-day pass. Hey, if this is the way it goes, bring back that seven-day pass. You're shooting yourselves in the foot by not having that seven-day pass. I'm going down to the States for two snowmobile shows in October, and I know the gist is the Americans head to Quebec, lower Quebec. It's close to them. You want to make it look good. You guys have been advertising,



"Come to northern Ontario." You do away with the seven-day permit and zing him real good for a full year's pass when he's only here on a week's holidays.

The other thing is, it was good coin for the club. The club sold that permit and they got most of that money because, in theory, the guy's riding in your district, your trail, your area, so it was good for them.

And locally here I can probably think of two or three places that might rent you a sled. But the way I interpret that is, if somebody's out renting the sled and they can be charged with trespassing, it's not them who gets charged. It's the poor guy who's trying to make a buck renting the sleds. Let's face it, insurance rates are high enough now for the poor guy. He's sticking his neck out now even renting you a sled. You guys are missing out on tax money.

**Mr Levac:** Thanks, Mark. Just so that you know, though, through all of the three parties, the intervention of having these hearings after first reading is to address exactly what you're talking about in order for us to hear you. So please be assured that you are being heard and that those possible changes have more likelihood of happening now with this new innovation than ever before because those changes are listened to. Be assured that we can put those points forward. That's why I asked that question.

**Mr Commodore:** No, no, I understand.

**The Acting Chair:** Thank you, Mark, for your presentation.

We have had a request from the OFAH to make a presentation today. Unfortunately, they are not on the list, but if there is mutual agreement, I'm suggesting they could make a 10-minute presentation.

**Mr Gerretsen:** What about the last presentation?

**The Chair:** If the agreement of the committee is to allow them to make a 10-minute presentation, then we will ask the Ontario Federation of Snowmobile Clubs, who I understand want to go last and are going last, to come after them.

So number one, do we have a mutual agreement from everybody? Unanimous consent? OK. They are on now. Mr Purchase or Mr Burns, do you still wish to go last?

**Mr Dennis Burns:** Yes, please.

1630

#### ONTARIO FEDERATION OF ANGLERS AND HUNTERS

**The Acting Chair:** All right, Gord Gallant for 10 minutes.

**Mr Gord Gallant:** Good afternoon and welcome to Peterborough, members from out of town. I appreciate the indulgence of the committee in allowing me to offer some brief comments. We had attempted to follow procedure and reserve a spot to speak; however, there was a lapse of communication between our office and the clerk's office. In any event, we are appreciative of the opportunity.

I do have a written brief, and I will be happy to provide copies to the clerk following the presentation. I would encourage the members to—

**Clerk of the Committee (Mr Viktor Kaczowski):** Do you have something to hand out?

**Mr Gallant:** When I am finished.

I will touch briefly on a few points, and hopefully we can get into some questions and discussion.

The OFAH's constituency: We have 650 member clubs across the province and 83,000 members. As anglers and hunters, we generally spend a large proportion of our angling and hunting time on crown land and, accordingly, are nearly as concerned with reasonable access to crown lands as we are with healthy fish and wildlife populations.

The issue before the committee today is not something that's new to the federation of anglers and hunters. Partly in response to comments made earlier today about the OFAH position, our position was adopted democratically in 1986 by the board of directors. The formal policy is appended to the presentation that I will provide later.

Briefly, the OFAH is opposed to exclusive possession being granted by the Ministry of Natural Resources for leased trails to any group. The OFAH has made recommendations and continues to work with the Ministry of Natural Resources regarding reasonable exemptions to traditional users, utility workers and so on, on trails that are permitted on crown lands through the land use permit process.

The OFAH has also made it a policy that we are opposed to a government or Ministry of Transportation trail sticker permit system. When that policy was developed in 1986, the policy was not developed in response to any particular initiative but part of the OFAH's long-term view to ensuring reasonable access to crown lands for our members.

I'd like to speak briefly about the snowmobile task force. It was formed sometime prior to January of this year. I see Mr Spina shaking his head. It wasn't; I don't know. The Ontario Federation of Anglers and Hunters was not specifically contacted by the snowmobile task force to take part. We received, second- or third-hand, the covering note that was attached to the task force discussion paper and immediately contacted the ministry with a request to take part formally and substantively in the process. It was not until the OFAH filed a freedom of information request that we even got the discussion paper, and that was in August of this year.

Through discussions with other organizations representing the traditional, historical users of snowmobile trails—the fur managers, who you've heard from today, representatives of the Prospectors and Developers Association, the forest industry, the Federation of Ontario Cottagers—we've been advised that they as well were not invited to take part in a substantive way in the work of the task force.

Going directly to the bill, though our mandate doesn't directly relate to a large part of the bill, the OFAH is generally supportive of those amendments that address



public safety. One issue I would like to address, though, is the imposition of mandatory trail permits and government policy. Appended to the OFAH presentation is the actual policy that the Ministry of Natural Resources uses to administer trails on crown land. There is a specific and detailed exemption for traditional users, of which anglers and hunters believe we are a part.

The question is that the imposition of mandatory permits could be considered, and is considered by the OFAH, contrary to that existing government policy. In that regard, we believe there is a duty and a requirement under the Environmental Bill of Rights to go through a public consultation process with such a significant change to policy. We do not believe the work of the snowmobile task force meets that requirement.

Recommendations for solutions: The OFAH is fully in support of mandatory permits for the touring, recreational rider, but we believe there should be legislative exemptions allowed for the traditional user. Some of the user groups that we would consider traditional have been heard from today. In most cases, these traditional users are readily apparent. Ice fishermen have lines, an auger, bait and so on; they are readily apparent. Trappers will have traps, spare parts for their traps, bait, scent, wire, axe, hammer, and so on, and possibly even some harvested fur if they're lucky. A prospector will have the normal equipment and so on.

The number of touring riders who would go to the extreme to equip themselves with this additional equipment, which would hamper their recreational ride, is surely to be few. In that regard, we feel that amendments should be made to the bill to allow for specific and detailed exemptions for the traditional user in the legislation rather than the regulations.

We also request that the committee closely review the rationale for the bill, if the bill is supposed to promote the sustainability of the trail system. We've heard from members of the OFSC today that compliance is already high. If you make a mandatory permit applicable across the province, how many more permits are you going to sell: 5%, 10%? That's certainly not going to be enough to address the shortfalls.

Thank you, and I'll entertain questions.

**The Acting Chair:** I think you did take your 10 minutes, Mr Gallant. Thank you very much for your presentation.

**Mr Gallant:** I will deliver copies of the full written brief to the clerk before he leaves today.

**Mr Gerretsen:** Is there no time for questions?

**The Acting Chair:** No, we agreed on 10 minutes and it has been 10 minutes. We will leave it at that.

**Mr Gerretsen:** I hope the ministry will meet with these people.

**The Acting Chair:** Thank you very much. We will—  
*Interjections.*

**The Acting Chair:** Gentlemen, that's not a point of order or anything else. Thank you very much for your presentation. Would you give the presentation to the clerk afterwards?

**Mr Gallant:** I would make an offer to meet further with the committee or provide any further background if the committee wishes to hear it.

**The Acting Chair:** Thank you very much.

1640

## ONTARIO FEDERATION OF SNOWMOBILE CLUBS

**The Acting Chair:** We will now call on the Ontario Federation of Snowmobile Clubs. Again, 20 minutes. Would you identify yourselves to the clerk, please?

**Mr Burns:** Good afternoon. My name is Dennis Burns and this is Ron Purchase. I am the president of the Ontario Federation of Snowmobile Clubs. With me today is OFSC's general manager, Ron Purchase. Ron and I appreciate the opportunity to address the committee on a matter of vital interest to both our organization and the province of Ontario.

For your reference, I am a volunteer and, as I found out earlier today, I'm addicted. Just for the record, I witnessed last weekend a sign installed by one of our volunteers in under 10 minutes.

As the elected president, I chair the OFSC board of governors. As senior staff person, Ron reports to the board of governors and is responsible for the operation of our corporate office in Barrie.

I am here today to speak on behalf of the OFSC's 281 community-based snowmobile clubs, their 225,000 individual family snowmobilers and thousands of business partners across Ontario.

I am here to protect and enhance the 49,000 kilometres of snowmobile trails OFSC clubs have built, which generate annual economic winter activity worth \$1 billion and add more than \$356 million in provincial tax revenue each season.

I come before you to present an urgent request from the OFSC to amend the mandatory permit provisions of Bill 101 so that organized snowmobiling and winter tourism in Ontario will be strengthened, not undermined. The OFSC is extremely concerned that a bill intended to improve snowmobile trails for tourism may end up doing considerably more harm than good. If Bill 101 is left unchanged, it is very likely that its legislated permit provisions will not be accepted or supported by our clubs and volunteers. Where will that leave all of us who want the partnership between the province of Ontario and the OFSC to be productive, constructive and ongoing?

In requesting mandatory permit legislation, the OFSC has asked the government to support us as a self-regulating, professional body by making it easier for our volunteers and clubs to pay the cost of operating tourism-based snowmobile trails for the betterment of all Ontarians. What we got through Bill 101 was a transfer of our basic operating authority to the Minister of Transportation. This won't work. None of us wants to see a good idea, honourable intentions, or considerable effort wasted because the proposed model for legislated permits



does not recognize the realities of what makes organized snowmobiling function so successfully.

What we do want to see are changes to Bill 101 that will allow the OFSC to continue to do what it does best. After all, isn't it our track record as Canada's foremost trail managers that brought us to this partnership in the first place?

It is the sincere belief of the OFSC that a legislated mandatory permit will only accomplish what it is intended to do if it's based on four critical cornerstones. I believe you've heard that from a number of our members, because I sure have.

(1) The final authority on all matters and processes related to administering a legislated permit must remain with the OFSC, especially use of our permit revenues.

(2) An OFSC-legislated permit must be an absolute and easily enforceable requirement on all designated OFSC trails.

(3) Reasonable accommodation must be made for traditional and commercial access on crown land. And, most of all, (4) trained OFSC wardens must have the authority to enforce legislated OFSC permits.

Each of these four cornerstones is a crucial component in the ultimate success of any legislated permit requiring OFSC endorsement and co-operation.

For over 30 years, organized snowmobiling has progressed in the province of Ontario because snowmobile clubs became organized locally, regionally and provincially. Organized snowmobiling starts at the grassroots with friends and neighbours who form local snowmobile clubs and develop trails for their own recreational enjoyment. These club volunteers bear the grassroots responsibility for obtaining the necessary land use permissions from local landowners and ensuring that their own groomed trails are ready for snowmobiling throughout the season.

Club volunteers are the pillars of organized snowmobiling and providers of groomed trails. They volunteer at the club level for a variety of reasons including local pride, camaraderie, sense of accomplishment, fun, the enjoyment of working outdoors and the satisfaction of being part of something really important. We know the committee has had the opportunity to meet with a number of these incredible individuals as part of the hearing process.

Snowmobile trails are the product club volunteers produce. On a provincial level, these trails motivate and unify organized snowmobiling. All of the economic, social and recreational benefits associated with snowmobiling flow from the snowmobile trails that club volunteers have built. What could be more appropriate than snowmobilers providing snowmobiling for snowmobilers?

Thus, the sustainability of snowmobile trails is of great interest to the province of Ontario. To continue this success, and to keep trails open and operating, it is imperative that the OFSC clubs and volunteers continue to play the lead role in controlling their own destiny. One of the fundamental vehicles for this self-determination is

control of the OFSC trail permit. This principle is captured in the first of our four cornerstones: the final authority on all matters and processes relating to administering a legislated permit must remain with the OFSC.

Bill 101, as currently written, is at odds with this basic principle. It transfers the authority for virtually every aspect of the OFSC trail permit to the Minister of Transportation while leaving all of the responsibility, but not the authority, with the club volunteers. We don't think that's fair or necessary.

Both the OFSC and its member clubs are not-for-profit organizations legally mandated to invest all of their revenues in trail operations and trail-related programs. On average, clubs already put more back into trail operations than they collect in permit revenues.

Both the clubs and the OFSC are very satisfied with the reporting and accountability mechanisms already in place that respond responsibly to the financial needs of organized snowmobiling, so what advantage would there be for any MTO involvement? If further proof of OFSC fiscal responsibility and track record is required, we suggest that you consult the northern Ontario heritage fund, the Human Resources Development Canada or Fednor to get a firsthand measure of the professionalism, timeliness and accuracy of OFSC financial management and reporting.

Volunteers must feel in control of the trails they've built. There is every reason to believe that unless this cornerstone is recognized and implemented, organized snowmobiling as we know it in Ontario could fall like a set of dominoes.

We believe there are a number of amendments to Bill 101 that could address this fundamental problem. One way of recognizing this cornerstone is to name the Ontario Federation of Snowmobile Clubs in Bill 101 as the exclusive service provider. In fact, Minister Jackson specifically identified the OFSC when the legislation was introduced, as did his ministry press releases and printed backrounders. From that benchmark, wording could flow that would assure the OFSC of the authority it needs to ensure the future progress we are all anticipating.

Alternatively, or perhaps even complementary, would be to recognize the OFSC as a self-regulating body, much as we understand has been done for other not-for-profit industry associations such as RECO, the Real Estate Council of Ontario, the tourism industry council of Ontario, and the Ontario Motor Vehicle Industry Council. Our information is that all of these bodies have been empowered to administer provincial licensing programs once handled exclusively by the province.

We sincerely appreciate the province's efforts to provide mandatory permits. However, we are not prepared to surrender control of the trail permit system our volunteers have worked so hard to develop. They deserve better than that. Having said that, we are confident that the amendments to Bill 101 can be made prior to second reading which will address the needs of the province and



organized snowmobiling, and look forward to open and fruitful discussions on that.

One of the primary reasons for legislated permits is to provide a new and sustainable source of operational funding for OFSC clubs by ensuring that all snowmobilers using OFSC trails pay their own way. This user pay, user pay principle is captured in the second cornerstone advocated by the OFSC: An OFSC-legislated permit must be an absolute and easily enforceable requirement on any snowmobile trails operated and maintained by an OFSC club.

Bill 101 allows the Ministry of Transportation to exempt classes of trails from the mandatory permit requirement. Our belief is all OFSC trails must be included, without exception. Unlike most other trail users groups, OFSC clubs embraced the concept of user pay almost from the outset, recognizing that self-funding was crucial to self-determination. The revenues raised from the sale of trail permits to those who ride OFSC trails has helped defray the cost of operations for recreational snowmobile trails.

This is a huge issue for the OFSC clubs. Since OFSC permits are presently unenforceable on OFSC trails running across much of our crown land, so many riders use OFSC trails without buying a permit. Yet clubs with trails on crown land incur at least the same level of expense to operate and groom their trails as do those with trails on private land where the permit is enforceable.

1650

Crown land trails would not exist at all or would be, for the most part, impassable in winter if they were not groomed regularly. Snowmobilers who choose to ride on OFSC trails do so because they offer a better, safer and more enjoyable experience that significantly reduces wear and tear on their machines and the risk of injury to others and themselves.

The user is paying for the trail improvements, not the use of the crown land. Those who do not want to ride OFSC trails do not have to pay a user fee. There are lots of other places to ride, although they may not be as safe and comfortable, or provide convenient access to hospitality services and amenities. But by legislating mandatory permits on all OFSC trails, the government would confirm that all recreational snowmobilers should have access to, and help pay for, the smoother, safer, marked, and integrated thoroughfares operated by the OFSC, regardless of where these routes are located.

At the same time, the OFSC understands and accepts that exceptions for some individual users must be made. This principle is captured in the third cornerstone: reasonable accommodation must be made for traditional and commercial access on crown land.

Certainly the OFSC recognizes that the work sleds of provincial organizations such as the OPP, Hydro Two, the MNR and Northern Development and Mines would be exempt from mandatory permit requirements. We also agree that those individuals who use snowmobiles for their livelihood should be exempt from mandatory permits on specific trails for designated work-related travel.

We also accept that certain traditional users such as landowners, cottagers, anglers, hunters and others may qualify for local exemptions to ride specific trails to carry out their primary recreational activity. But the OFSC maintains that none of the aforementioned should be able to use OFSC trails solely for the purpose of recreational snowmobiling or beyond their primary local area of activity without first purchasing a permit.

What comes to mind is the story that was given in both Kenora and Thunder Bay, where one of the local residents runs a resort. What he does, to all his American travellers who come, is give them a three-foot plastic rod. "If you get stopped by one of the trail wardens, just tell them that you're out ice fishing." Nice little catch.

Exempt users could easily be identified with a special limited-use permit issued locally by OFSC clubs. Our concern is that such exemptions be fair and reasonable.

Legislation without proper enforcement is meaningless. Generally, there has to be enough enforcement presence to give the impression that it is likely offenders will be caught and penalized. There are 49,000 kilometres of OFSC trails in Ontario, a total length greater than that of our provincial highways. The OPP have about 150 snowmobiles to cover the entire province. There are about 124 OFSC volunteers trained as STOP officers. Even accounting for personnel from other police agencies that may patrol snowmobile trails from time to time, no one could argue that there is enough enforcement presence to make much of an impression.

That's why we capture this final principle in our fourth cornerstone: trained OFSC wardens must have the authority enforce legislated OFSC permits.

Presently, there are about 2,500 club volunteers in Ontario who are trained as OFSC wardens. For OFSC wardens not to have the authority to enforce OFSC permits would take the teeth out of the new legislation by reducing its enforceability by 2,500 active patrollers dedicated to that purpose. This is especially critical in the first season or two, when many riders will be testing the legislation to see if it must be obeyed. Including wardens in the enforcement of mandatory permits simply makes sense.

The introduction of mandatory permits is an important step in the continuing development of Ontario as the premier snowmobiling destination in the world. We believe that modifications can be made to Bill 101 which will make it entirely effective, and we pledge to continue our active support and provide assistance in any way we can.

I'm sure the committee has come to appreciate mandatory permits are only a part of the larger puzzle of sustainability. I'd like to ask OFSC general manager Ron Purchase to close out our presentation and these hearings with an overview of the bigger picture.

**Mr Ron Purchase:** Good afternoon. With the committee's indulgence, I'm not going to go through page 6 that you have in front of you. I believe all that information has been well covered in your five days. It



doesn't add much to the picture, and I'm afraid we'll have run out of time for questions.

If we could skip over to page 7, I'm going to talk mostly about the table that you see there in front of you. I want to preface that by saying that through the 1990s it was becoming increasingly obvious to us that the amount of dollars we could raise through our recreational base user-pay permit was falling behind the cost of delivering the tourism trails that we were being asked to deliver. We knew that somebody eventually was going to say, "How much do you need?" We were pleased when we got some support from the northern Ontario heritage fund to do a major study, our Winter Gold study. You have a copy of it in the package that we've distributed. Of the number of good things that Winter Gold looked at, it looked at how much it really takes to deliver those trails properly; not how much we had available but how much it really takes.

One of the first things they did was go out and ask the other jurisdictions across the North American snowbelt, "How much do you think it takes to deliver tourism snowmobile trails?" The answer they got uniformly was, "We don't know, but as soon as you find out, tell us, because that's an awfully good question."

So the study team set about putting in motion some groundbreaking work on studying just what it takes to deliver those trails, not to some incredible standard but just to do it right. The number they came up with was around \$20 million. That rang true to us. Our gut feeling on it said that's probably about right. It also explained why the \$14 million we could raise through our recreational user-pay permit was falling behind what it takes.

The table that you see there on page 7 at the bottom right corner you can see it's about \$21 million. The \$20-million that it takes to deliver trails did exclude a few of the costs that it takes and we think there's a bit more that needs to be added, but a number something like \$20 million is what a funding mechanism needs to get to.

We also found out that the states and provinces that did well on this had a number of revenue streams. It often included, and almost always included, participation from the state or province.

If you look down the table, there are five revenue streams showing there. Number one is our existing user-pay fee, and you can see that it is raising about \$14.4 million.

Revenue stream 2 is really best considered as what happens if we're able to get permits on all the machines that fairly should have permits. We've called it the increase from mandatory permits. We think there are about 15,000 out there. They're 15,000 in very particular areas, and that's crown land. That's where our problem is. So this one really deals with crown land. Those dollars could as easily be generated if we had a blanket land use permit for crown land as opposed to mandatory permits. Number 2 really answers the question, where can we get some additional revenue for our tourism-based snowmobile work, and especially on crown land?

Number 3 is the registration surcharge. That's the model that Quebec and New Brunswick and some other provinces have used to find new dollars to support tourism snowmobiling. It could be the gas tax, but it's some form of public contribution to the revenue streams. We see it as needing to be about \$3.6 million.

Clubs are still going to have to do fundraising. We've said our 280 clubs fairly could be asked to raise \$2,500 each in their communities to support that work. That contributes about \$700,000.

Partners and stakeholders: You've heard through this process that there are businesses doing well by snowmobiling, and we think that they need to contribute. We don't know what the right numbers are, but we're saying there have to be 500 businesses out there doing well, and we think a number like \$1,000, just for argument's sake, gets us to about half a million.

Those together add to \$21 million. My point here was just to help place mandatory permits within the broader sustainability picture, that it's one important element. It answers the question, primarily, what do we do about crown land? It also helps on areas that have 95% participation already in permits. It shows a solid appreciation for the volunteers who have put that in place.

That's what the overall system does. In closing, we'd like to thank the committee for this opportunity to speak today and hope that our remarks will contribute to an acceptable revision of the mandatory permit provisions of Bill 101. At this time, we'd be pleased to accept any questions.

**The Acting Chair:** Unfortunately, gentlemen, you have taken up your 20 minutes.

**Mr Levac:** On a point of order, Mr Chairman: May I request unanimous consent to allot five minutes per party?

**The Acting Chair:** Do we have unanimous consent? We do. The rotation—I guess it is your caucus, Mr Levac.

1700

**Mr Levac:** I won't be taking all the time but I just wanted to ensure that we had enough time to cover off some concerns. I do have a couple of quick questions. You kept referring to authority to enforce. Can you define that for me as to what it is the wardens do now that they need to have extra added to them to make a move from where they are now to where you want them to be, so that I can get a handle on what kind of authority you want to grant?

**Mr Burns:** When we talk about our wardens, to make sure they've got the authority to stop and charge, Bill 101 shows there's a \$200 fine that could be applied. So we need some kind of process in place that we can actually stop and go through the process through a citizen's arrest or through a photograph of the machine. I don't have the easy answer to get us there, but you have to be able to enforce the permit by our volunteers. We can complement the OPP force and the STOP program with 2,500 people. We know it'll be challenged in northern Ontario. I'm in from Terrace Bay and I'm telling you, our poor



one guy in town with one 377 Safari is not going to cut it on our trails.

**Mr Levac:** I appreciate that, but I wanted to get a sense that you're looking for almost a step beyond what is presently taking place, so we need some more authority provided to them.

**Mr Burns:** The current regs say that if I've got an LUP, the first thing I have to do is ask them to leave. The second thing I can do, if I can actually get it to stick in court, is to go after a trespass to property. It's very difficult to hold up in court. We're trying to get something in place so that we can actually enforce it.

**Mr Levac:** Commenting on the four pillars that everybody's been commenting on, I get a sense that Bill 101, unamended, will not be acceptable to most groups.

**Mr Burns:** From the feedback I'm getting from all the volunteers—my phone has been ringing steadily since the open houses started, the sessions with the standing committee—that is their feeling.

**Mr Levac:** If it can be shown to you that the legislation in its present form, or slightly modified, needs to take place in order to fulfil legislative responsibilities, could that satisfy your concerns?

**Mr Burns:** We're very open to negotiations and discussions at this point but we still need a lot of things put in place. We've offered a couple of examples where other ministries—not ministries, I stand corrected, but other groups—

**Mr Levac:** I have one of another ministry.

**Mr Burns:** OK, thank you, but from RECO, the real estate group, the Ontario motor vehicle. There are other processes in place I'm sure we can get to.

**Mr Levac:** Thank you. One quick question from my colleague.

**Mr Gerretsen:** First of all, an excellent presentation. We've heard from other groups today as to what the problems are for their particular situation, but you've actually tried to address as to how we get to deal with some of those issues. I think that's always the important part in legislation. Everybody can agree as to the concept and principles or where we want to get to, but how do we get there and what kind of changes do you have to make? I think you've made some excellent suggestions in here.

The one question that I have deals with your organization as a whole. What I've heard from groups, not only in the hearings but elsewhere as well, is that in southern Ontario we have a tendency to have a number of large clubs with a relatively small number of trails or small mileage in trails. In northern Ontario we've got lots of mileage but few members. The redistribution of funding that you get within your organization, is that system working and how can that be improved upon?

**Mr Purchase:** I've been working for the last 10 years on those numbers. I know the kind of dollars that every club generates and how they spend it. What I can tell you is that of our 280 clubs, there aren't five clubs that we would agree have too many dollars. There are quite a number of clubs that are doing just well enough to do the job that's being asked. There are also quite a number of

clubs that are just in very bad shape. They have a great amount of trail to groom and not enough dollars to do it with. What our clubs have said to us is, "We understand that there are funding inequities but you can't solve one club's problems by taking dollars away from clubs that are just making a go of it."

What I'm saying to you is the problem is the pie isn't big enough. We're doing the best we can to carve it up fairly, but the only way that we can get a bigger piece to one club is to take some from another that has just barely enough now. If the perception is that there are clubs that have great surpluses of dollars, they are very few and we're working hard to redistribute it. It's not hard to see where this comes from. If you're in northern Ontario or anywhere else in the province, if you're a volunteer and you're stressed to deliver a product without the resources, you're convinced somebody else must have them, but that's not the reality of the dollars.

**Mr Spina:** Thank you, gentlemen, and your organization for its continued comprehensive supply of information as we went through this process, not just to all of the MPPs but certainly to the clerk's staff and the research people.

I want to refer back to your chart in a minute, but my first question has to do with multiple access. We have a crown land policy, as you know, that says that you cannot give exclusive use of crown land to any one body. How do we get around that? Right now you have permits within your own environment, but if we go one step further to put it into legislation, that could jeopardize that particular crown land policy. How do you see us maybe getting around that, or do you see us getting around that?

**Mr Burns:** We've actually got exclusive use on some of the property now, Joe, with our LUPs. If you look at what we've got, we've got a deal with the local trapper, so we give him access in and out of the property where he justifies it. But anyplace that we've got an LUP right now, it's for the winter use of the trails. It's in place. I've got control points set up all around town. When we originally started doing the trails in 1988 and moved into other areas, as we cut new trails, they gave us LUPs. That means I have the right to stop the snowmobiler from going through and he's got to have a permit.

**Mr Spina:** But does that mean that you have exclusive use of that trail?

**Mr Burns:** I work with the trappers and the local committees. We talk about the traditional users. We know who the people are. We give them free access on the trails now.

**Mr Spina:** So all you're saying is that you're enforcing the regulation or, in some cases, if we get to the legislation, for your users only.

**Mr Burns:** Yes.

**Mr Spina:** The other side is the distinction between the trail warden and the STOP officer. If the trail warden was given the authority to lay a charge under the act for being on the trail without a permit, insurance and other elements, does that essentially put the trail warden on the



same basis as a STOP officer, who is a sworn special constable of the OPP?

**Mr Burns:** I need some kind of power put in place for the warden so that all he needs to do is take the registration number with a picture. I'll give him a camera. If he can take a picture of the machine, he's got the registration on the machine and he's got all the information, he's in place to actually place the charge.

**Mr Purchase:** Specific to permits, as opposed to registration, insurance and all of the other legal requirements that we'd love for the STOP program and OPP to continue to enforce. Because we need to focus clearly on the mandatory permit itself.

**Mr Spina:** OK. The last question I have, and I'll try and leave time for my colleague, is on the registration surcharge. Ron, when you refer to it in line 3 of your draft, you've got \$10 and 360,000 units. Where is the 360,000 coming from? Where is that \$10?

**Mr Purchase:** The \$10 we would see as an additional charge on top of the current provincial registration fee of \$25 the first year and \$15 the second, and somewhat different in northern Ontario.

We would see an additional surcharge on the current registration of the vehicle. MTO has published around 360,000 as the number of snowmobiles they have in their system. I think there's some good argument that the OFSC is called upon to represent and be an advocate on behalf of all snowmobiling. We do enormous amounts of safety promotion and safety work. We believe there's a fair amount of logic to say that every snowmobile vehicle owner needs to contribute to that.

**Mr Spina:** So if that \$10 came out of the \$15 or the \$25, as opposed to being a surcharge, would that make any difference to you?

**Mr Purchase:** That sounds wonderful, Joe.

**Mr Spina:** I'm just asking, does it make any difference to you?

**Mr Purchase:** We like that idea.

**Mr Spina:** OK. Thank you very much.

**The Acting Chair:** There's just about a minute left, Mr O'Toole.

**Mr O'Toole:** Thank you very for your very comprehensive presentation. I'll sort of follow up. I don't want this to sound in any way negative. I'm very supportive of the concept of self-regulation; I'm very supportive of the idea of legitimizing something that exists. It exists and you're just trying to formalize it.

That being said, I've heard twice today, and other days at the hearings I've heard it too, that the risk of volunteers—I'll be quick to make my point, Mr Chair—is where the demand exceeds the revenue. I've said this today as well: that's the case in every single ministry.

The moment it's legitimized and we say, "The standard will be here," health, education, MTO, every ministry wants more money. So we'll now assume responsibility. If you want responsibility for setting the rate of tax—that's the fee—good luck, because you'll become more unpopular with your members. The pie is never big enough, and the more you legitimize something, it just becomes, "I've paid my fee; have a nice day," and you'll be back at the government, Bill 101 is law. You're asking for \$3.6 million here. I put to you that if it's \$21 million, it will be \$40 million, because the ministry will have to put the stamp on everything, the bridges and all the stuff.

You've got to be careful what you're asking for. You may be wise to look at the other route, without scuttling this whole thing of a self-regulatory regime, like you've mentioned with the automobile dealers' association. It's user pay; you get what you want. You license them, you deal with the discipline and all the other things. It's a tough regime, and I see it more clearly today when I see that your shortfall is almost 50%. I've heard that repeatedly. That's what I hear all the time: it's 50% short. So you're probably overstated in your revenue and understated in your expenditures.

**Mr Purchase:** I think the quickest way to discourage anybody from a job is to not give them the resources it takes to do the job that's being asked of them. Our volunteers have been here for 25 years. I think they'll be here for another 25, but it's up to all of us to find the tools, the dollars it takes to allow them to do their job. Line number one is our contribution: it's \$14 million. We know through Winter Gold that if we want tourism trails, we're going to need to find some additional revenue streams. Our volunteers are really looking forward to the additional dollars to do the work we're asking of them.

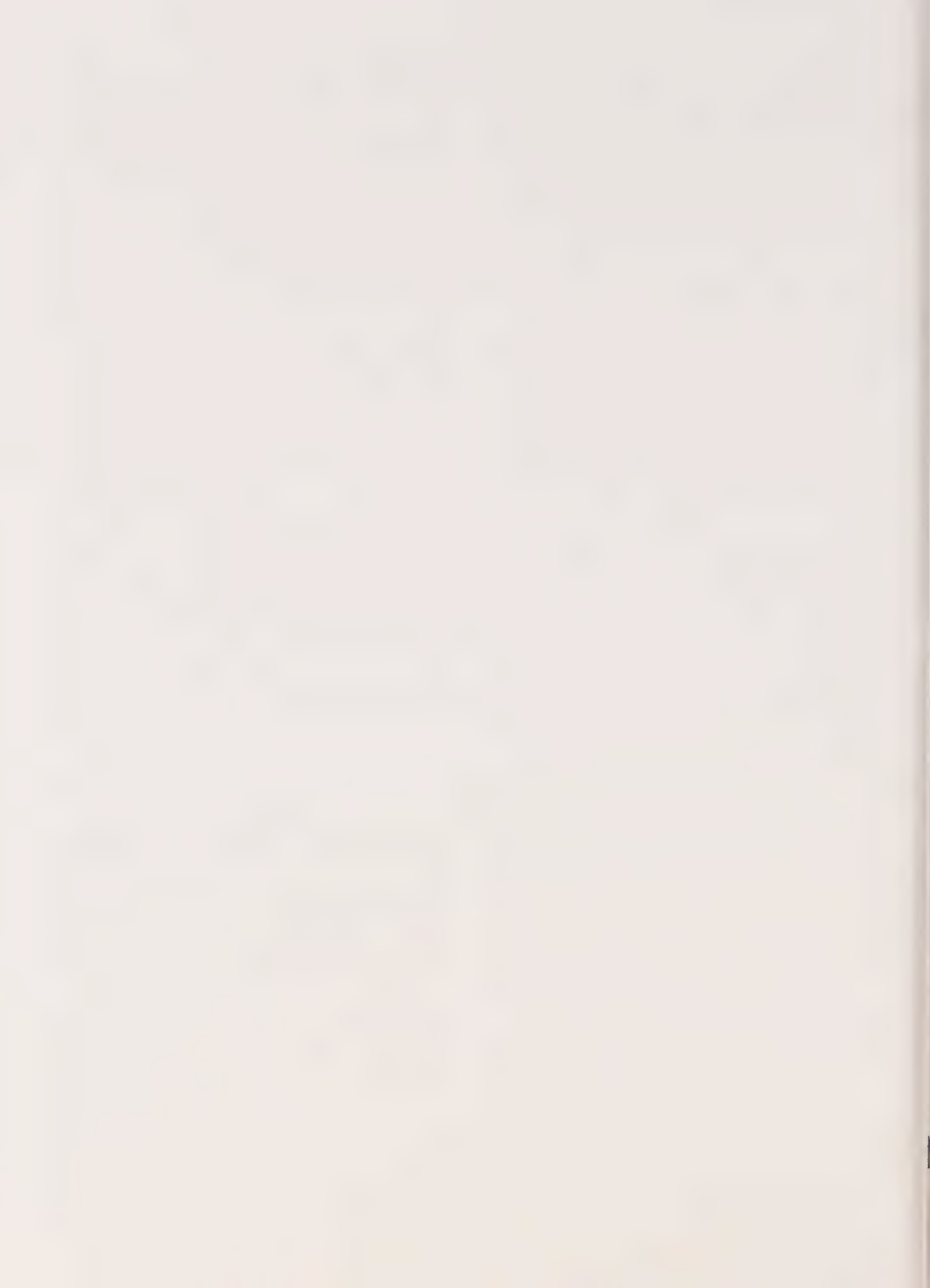
**Mr Burns:** Could I just make one comment, Mr Chair? In reference to the volunteers, we need to make sure that they feel good about how they're doing their job. Currently we do a major fight with everybody on crown land when we stop them and say, "You don't have a permit." "I don't need a permit, I've got a fishing rod." It's very discouraging for the gentleman who has put in the trails, worked so hard and done so much, to get so easily discouraged by some guy with a three-foot fishing rod and you know he's not fishing; he's just out riding your trail and there's nothing you can do about it. It's truly a crown land issue and that's for the mandatory permit. For private land you don't need it.

**The Acting Chair:** Thank you, gentlemen, for your presentation. To the committee, thank you for your co-operation. This committee is adjourned for today.

*The committee adjourned at 1714.*









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